

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE SOUTHERN DISTRICT OF INDIANA  
 3 INDIANAPOLIS DIVISION  
 4 CAUSE NO. 1:20-cv-03104-JMS-DML  
 5  
 6 LINDA L. STARKE COLSTEN, )  
 7 Plaintiff, )  
 8 )  
 9 -vs- )  
 MUNCIE SANITARY DISTRICT )  
 10 )  
 11 Defendant. )  
 12  
 13 DEPOSITION OF LINDA L. STARKE COLSTEN  
 14 The deposition upon oral examination of LINDA  
 15 L. STARKE COLSTEN, a witness produced and sworn  
 16 before me, Tracy Larimore, RPR, Notary Public in and  
 17 for the County of Allen, State of Indiana, taken on  
 18 behalf of the Defendant, at the offices of Bose  
 McKinney & Evans, LLP, 111 Monument Circle, Suite  
 19 2700, Indianapolis, Indiana, on the 16th day of  
 April, 2021, scheduled to commence at 9:00 a.m.  
 20 pursuant to the Indiana Rules of Trial Procedure  
 21 with written notice as to time and place thereof.  
 22  
 23  
 24  
 25

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1 Q All right. And it looks like, alternatively,  
 2 through your career, at least in the, the latter  
 3 years, your job was either labeled as secretary  
 4 in certain parts of the District, or office  
 5 manager. Am I right about that?  
 6 A Yes.  
 7 Q Was there any practical difference in what you  
 8 were doing in those two jobs?  
 9 A Not really.  
 10 Q I didn't get that sense.  
 11 A I mean, it -- I mean, no, not really.  
 12 Q Okay.  
 13 A Some, some people have got a little more pay for  
 14 it, but...  
 15 Q Pay for the office manager versus the secretary  
 16 job?  
 17 A Uh-huh.  
 18 Q But you did not?  
 19 A No, I did not.  
 20 Q All right. Well, it's a good place to start in  
 21 terms of documents.  
 22 I'll hand you, through the course of the  
 23 deposition, documents that I have and ask you  
 24 about those, give you the opportunity to look at  
 25 them.

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1 different political parties?  
 2 A (Shakes head.)  
 3 Q Just political differences on what level? In  
 4 other words, because I know you've had some  
 5 other --  
 6 A What they expected me to do and what was allowed  
 7 by law and what I was and wasn't going to do.  
 8 Q Okay. So give me more details about what was  
 9 going on.  
 10 A At that time period, they expected women to  
 11 sleep with them, so there you go.  
 12 Q That is a problem. So you have disagreed  
 13 obviously and --  
 14 A Obviously.  
 15 Q -- and reasonably on that front. So did you --  
 16 you left, and how long were you gone?  
 17 A I was only gone from August, like I said, it was  
 18 either August or September of '77, and then I  
 19 went back to work because they kept calling me,  
 20 wanting me to come back to work, and I finally  
 21 went back in 1978, in July. July 28th of 1978.  
 22 Q Did the board composition change --  
 23 A Yes.  
 24 Q -- or what made you feel comfortable?  
 25 A Yes.

1 A Sure.  
 2 Q I don't think many of them are complicated,  
 3 other than if you -- they have a big handbook,  
 4 as you're probably aware. I'm going to hand you  
 5 now what will be marked as Defendant's  
 6 Deposition Exhibit 1.  
 7 (WHEREUPON, Exhibit Number 1, Position  
 8 Description - Secretary, was marked for  
 9 identification.)  
 10 MR. SWIDER: I'll give you one. I'll give  
 11 you one, Aaron.  
 12 MR. WILLIAMSON: Thank you.  
 13 Q And then I will -- I'm going to give yours to  
 14 the court reporter and she'll put a stamp on it.  
 15 So what I've handed you goes back to 2010,  
 16 and it looks like it is a job description for  
 17 secretary, which doesn't have your signature on  
 18 it, so I don't even -- I won't even ask you,  
 19 especially going back that far -- who made the,  
 20 the change here between sanitation and BWQ. I'm  
 21 not sure it's relevant, but maybe it is. BWQ  
 22 is --  
 23 A Bureau of Water Quality.  
 24 Q Bureau of Water Quality. That's what -- Bureau  
 25 of Water Quality, which was a position in the

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1 District. Was it -- is sanitation just the same  
 2 thing as Bureau of Water Quality? Or is that a  
 3 broader term? Do you see how sanitation has  
 4 been marked out there and BWQ has been added?  
 5 A Yes. I see that.  
 6 Q Is there -- in your mind, was there any  
 7 difference between Bureau of Water Quality and  
 8 just the sanitation department? Is that a  
 9 separate division?  
 10 A Yeah. They're two different departments.  
 11 Q Okay. Okay. So there is a sanitation  
 12 department?  
 13 A Yes.  
 14 Q Separate from the BWQ department?  
 15 A Yes.  
 16 Q Okay.  
 17 A And if --  
 18 Q Go ahead. What is it? Because it will help me  
 19 understand the difference. So the, the  
 20 sanitation department, what did they do that was  
 21 different from the, from the water quality?  
 22 A Well, the, the secretary's position, probably  
 23 not a lot.  
 24 Q Okay.  
 25 A But departments are different.

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1 Q Okay. And what do they do that's different?  
 2 A Sanitation?  
 3 Q Uh-huh.  
 4 A They pick up trash.  
 5 Q Uh-huh.  
 6 A Water quality is responsible for keeping track  
 7 of pollutants in the river, trying to keep the  
 8 river clean.  
 9 Q What river is that?  
 10 A White River.  
 11 Q Were there more employees working for the  
 12 sanitation department, generally, than there  
 13 would be for the BWQ department?  
 14 A Yes.  
 15 Q And what would you say that ratio would be or --  
 16 approximate numbers? I'm not holding you to it.  
 17 I'm just trying to get a sense.  
 18 A Oh, my goodness. We had probably less than 20.  
 19 Q In BWQ?  
 20 A Uh-huh.  
 21 Q And sanitation would be a lot, I would assume?  
 22 A It would probably be 100 or more, maybe.  
 23 Q Because you have all the people picking up the  
 24 garbage, or the trash?  
 25 A Right.

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1 Q Okay.  
 2 A I mean, that's just a guess. I mean, I'm not --  
 3 you know.  
 4 Q It makes sense that that department would be  
 5 considerably smaller than the sanitation  
 6 department, because I wasn't even aware that  
 7 there was this separate department.  
 8 And just to outline a little bit, if you  
 9 can help me, in Muncie Sanitary District, those  
 10 are two departments. I assume there's  
 11 administration?  
 12 A Muncie Sanitary District has an administration  
 13 office.  
 14 Q And then are there other, a lot of other  
 15 departments or just a few?  
 16 A They have an engineering department. They have  
 17 a sewer maintenance department.  
 18 Q Okay.  
 19 A They have a water pollution control.  
 20 Q Water pollution...  
 21 A Control.  
 22 Q Control.  
 23 A They have a storm water, which falls kind of  
 24 under the Bureau.  
 25 Q Of Water Quality?

Page 20

1 A Quality.  
 2 Q Okay.  
 3 A And then they have sanitation and water quality,  
 4 water quality. And I may -- I don't think I've  
 5 left anything out but...  
 6 Q Did you say sanitation and water quality,  
 7 separate from what we've talked about already?  
 8 In other words, we've got the Bureau of  
 9 Water Quality?  
 10 A Okay.  
 11 Q And then you've got storm water under that. And  
 12 then it sounded like your last department also  
 13 dealt with water. I thought you said sanitation  
 14 and water?  
 15 A No. Just sanitation, water pollution control,  
 16 or wastewater treatment, because they changed  
 17 their name. When I went to work for them, it  
 18 was wastewater treatment.  
 19 Q All right.  
 20 A And then they changed it to water pollution  
 21 control.  
 22 Q Okay.  
 23 A So they have water pollution control.  
 24 Q Sewer maintenance?  
 25 A Sewer maintenance, sanitation, BWQ --

Page 21

1 Q Yep.  
 2 A -- and then the storm water.  
 3 Q Okay. Storm water is another one. Now, do --  
 4 as you look at the size of these departments,  
 5 and I'm putting this --  
 6 A They also have a billing office. Sorry.  
 7 Q Which would be part of administration or not?  
 8 A No. It's a separate office.  
 9 Q Okay.  
 10 A It's financial. I'm not sure what they call it  
 11 now. It used to be the billing office. I don't  
 12 know if it's still called billing office or not.  
 13 Q And all of these are Muncie Sanitary District  
 14 departments, separate from the City of Muncie  
 15 and all its departments; correct?  
 16 A Yes.  
 17 Q And so from your standpoint, as you recall, was  
 18 the sewer maintenance department about the same  
 19 size as BWQ, or was that smaller?  
 20 A No. They have more employees.  
 21 Q More employees. And do they have their own  
 22 secretaries? I assume they do as well?  
 23 A At the time, there was two employees.  
 24 Q Two secretaries or two --  
 25 A I don't know what their titles were for sure.

Page 22

1 Q Okay. Okay. When you say "two employees" --  
 2 A Uh-huh.  
 3 Q -- you mean not overall, you mean...  
 4 A Well, they had two office people.  
 5 Q Oh, office people, okay. That's what you meant.  
 6 Got it.  
 7 How many office people, as you described  
 8 them, would BWQ have at any given time? Would  
 9 it just be the one?  
 10 A Just the one.  
 11 Q Okay. And then sanitation department probably  
 12 has several?  
 13 A As far as I know, they had three or four.  
 14 Q Okay. And then administration, I guess they --  
 15 do they have -- they would have receptionists,  
 16 secretaries or...  
 17 A They would have a receptionist on and off, but  
 18 they had one office manager.  
 19 Q Okay. And the size of that department, I'm just  
 20 comparing with BWQ, same? Larger? Smaller?  
 21 A What --  
 22 Q Total number of employees' in administration?  
 23 A -- the admin?  
 24 Q Yeah.  
 25 A It's smaller.

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1 Q Uh-huh. And then water pollution control?  
 2 A Had one secretary.  
 3 Q One secretary. And was it generally --  
 4 department bigger or smaller than BWQ?  
 5 A It was larger.  
 6 Q Larger. Substantially larger or just --  
 7 A No, because they have three shifts.  
 8 Q Oh, okay. So it is larger?  
 9 A Yeah. I mean -- and I don't know want to say  
 10 that -- the shifts aren't that large.  
 11 Q Okay.  
 12 A They -- you got to remember, I've not been there  
 13 for a while --  
 14 Q I understand. I understand.  
 15 A -- but I used to be -- I used to work in that  
 16 department.  
 17 Q Ah.  
 18 A And when I worked in that department, there were  
 19 at least three operators a shift, and then --  
 20 Q Okay.  
 21 A -- they also had a maintenance department that  
 22 had at least probably 10 or 15 people. And they  
 23 had a belt press crew, but it was all under one  
 24 department.  
 25 Q Okay. And then finally, storm water?

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1 A That was one person.  
 2 Q Okay.  
 3 A Well, two.  
 4 Q And they had a billing office?  
 5 A And then in the billing office, I'm not -- I  
 6 don't recall exactly how many employees they  
 7 had --  
 8 Q Uh-huh.  
 9 A -- but they had at least five.  
 10 Q Okay. Back to Exhibit 1 -- thank you. That is  
 11 very helpful.  
 12 Exhibit 1, now I understand there's a  
 13 difference, obviously, between the sanitation  
 14 department and BWQ.  
 15 Going back, let's say -- this is 2010 --  
 16 would you have been working for BWQ in 2010? Or  
 17 had you gone back and forth? Do you recall?  
 18 A I don't, I don't remember when I went to BWQ.  
 19 Q Okay. And I have a couple documents --  
 20 A I really don't.  
 21 Q -- that might help us.  
 22 A That's fine.  
 23 Q Let's take a look --  
 24 A Right off the top of my head, I don't remember  
 25 exactly. I do know that -- I do know the job

<p>1 that I signed up for, it was for an office 2 manager's position. 3 Q In BWQ? 4 A Yes. 5 Q And you had applied for a lateral transfer and 6 didn't get it one time? 7 A Yes. 8 Q And I've got, I've got a document on that, I'll 9 bring out in a minute. 10 A Yes. 11 Q Okay. But just running from -- and, and I'm 12 looking -- if we're looking at 2010, that's ten 13 years before you left, were you -- 14 A I didn't work -- 15 Q -- still going back and forth or were you at 16 BWQ? 17 A -- I didn't work -- I don't -- I don't remember. 18 Q But -- 19 A I don't think I worked at water quality ten 20 years. I might have, but I don't think I did. 21 Q So you were with sanitation department before 22 you went to BWQ? 23 A I worked at sewer maintenance prior to -- 24 Q And how long -- 25 A -- water quality.</p>	<p>Page 25</p> <p>1 Q Right. All right. So these changes, from the 2 engineering department and then the sewer 3 maintenance to sanitation and BWQ, this happens 4 as part of your career? 5 A Most of the moves that I made were for a higher 6 rate of pay. 7 Q That makes sense. 8 A It was to help myself and my kids. Simple as 9 that. 10 Q Yep. 11 A I mean, I don't know how else to put it. 12 Q I think we all understand that. 13 And so again, was there a point near the 14 end of your work for the District where you were 15 just in BWQ? 16 A Yeah. 17 Q And would that be, could that be as many as five 18 years? 19 A About, I'd say. 20 Q Last five years? 21 A Yeah, about that. 22 Q Let's look at that for a guidepost and then 23 these documents may help us out, because this -- 24 the reason why I focused on 2010, because this 25 document was in your personnel file, but it may</p>
<p>1 Q -- how long were you sewer maintenance? Was 2 that the majority of your career? 3 A No. 4 Q Okay. 5 A Engineering was the majority of my career, but 6 at one point, engineering and sewer maintenance 7 were in the same department. And I worked sewer 8 maintenance and as a -- I cleaned sewers. 9 Q Physically? 10 A Yes. 11 Q There's no shame -- 12 A There's no -- 13 Q -- in that. 14 A -- I mean, there's no other way of putting it. 15 Yes, I did clean sewers. 16 Q But that would go back quite a ways? 17 A Yes. 18 Q Because I don't see anything in this job 19 description -- 20 A No. There's nothing in that that -- in this job 21 position that would say that I would have to do 22 that, no. 23 Q Okay. 24 A Other than maybe the lesson that says you do 25 what you're told.</p>	<p>Page 26</p> <p>1 have nothing to do with you, because if -- and 2 the date maybe doesn't indicate anything 3 because, even though this job description was 4 written in April of 2010, you might have gotten 5 the job in April of 2015, with the same job 6 description. 7 Were you working days? This has 7 a.m. to 8 3 p.m. 9 A Yes. 10 Q And for the last five years? 11 A (Nods.) 12 Q We'll use that as a benchmark. And so at the 13 time that you left, would this have been an 14 accurate job description? And I'm looking at, 15 you know, "Answers telephones, greets office 16 visitors, determines nature of call, responds to 17 inquiries" -- 18 A Yes. 19 Q And I think, generally, in the complaint itself 20 that was filed in this case, you also have at 21 least a summary of duties, and -- let's see what 22 this says. So in Paragraph 17 of the complaint, 23 and I'll bring this exhibit out later, but take 24 a look at 17. Would you read that for the court 25 reporter?</p>

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1 A It says, "During her tenure as secretary,  
 2 Colsten's duties included answering telephones,  
 3 greeting and assisting visitors, various  
 4 clerical duties, and assisting with payroll."

5 Q Is that an accurate description of what you were  
 6 doing at the time of your separation?

7 A Well, I also took care, made sure that our  
 8 budgets were straight and --

9 Q Okay.

10 A -- paid the claims that were -- or invoices that  
 11 were submitted.

12 Q Let me give you -- we'll just go ahead and put  
 13 it in the record now, the Complaint, and we'll  
 14 mark that as Exhibit 2, so we all are on the  
 15 same page here.

16 (WHEREUPON, Exhibit Number 2, Complaint for  
 17 Damages, was marked for identification.)

18 MR. WILLIAMSON: Thank you.

19 MR. SWIDER: Sure.

20 Q So what I just went through with you was a  
 21 discussion of Exhibit 2, and I believe this is  
 22 the Complaint that was filed on your behalf to  
 23 initiate the lawsuit in this case.

24 Take a look at it and let me know if you  
 25 agree with that.

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1 A I was advised to file the Complaint with the  
 2 EEOC.

3 Q I'll have that, too, and I see the confusion,  
 4 perhaps. In order to file the lawsuit, at least  
 5 on a couple of your claims, the age claim and  
 6 the disability claim, you would first have to  
 7 file a charge with the Equal Employment  
 8 Opportunity Commission and/or Indiana Civil  
 9 Rights Commission. And you did file a charge  
 10 with the Equal Employment Opportunity  
 11 Commission, which I will bring out as well.

12 A Yes.

13 Q But then, after those were dealt with, then this  
 14 lawsuit was brought. And, and that's when the  
 15 FMLA claim was added, because there was no  
 16 agency requirement for that.

17 So this would be the lawsuit or the  
 18 Complaint that underlies the lawsuit in this  
 19 situation. Does this look familiar to you on  
 20 that front?

21 A Uh-huh.

22 Q Did you, did you get to look at this before it  
 23 was filed?

24 A Uh-huh.

25 Q Okay. So in the context of the job description,

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1 I note there are several things on Exhibit 1,  
 2 and I'm trying to cover with you what, you know,  
 3 the major part of your job was. And consistent  
 4 with the job description, particularly the first  
 5 paragraph, is Paragraph 17 of the Complaint  
 6 where we've outlined some duties: Answering  
 7 telephone, greeting and assisting visitors,  
 8 various clerical duties, assisting with payroll,  
 9 and then you just mentioned keeping budgets  
 10 straight. What does that entail?

11 A To make sure that we didn't run out of money.

12 Q Okay. You don't want to run out of money.

13 How, how would you administer that? In  
 14 other words, would you, then, see the budget  
 15 which would be what you expect to happen during  
 16 the year, and compare that with what was  
 17 actually happening during the year on a regular  
 18 basis to see that those two weren't too far out  
 19 of line? Is that a fair statement?

20 A Yes.

21 Q And would you do that monthly? Weekly?

22 Semi-yearly? Do you remember?

23 A Biweekly.

24 Q Okay. And if you saw problems arising, who  
 25 would you raise those with?

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1 A Rick.

2 Q Okay. And by "Rick," you mean Rick Conrad?

3 A Yes.

4 Q Sitting with us today.

5 Pulling invoices, what does that entail?

6 A You mean paying invoices?

7 Q Probably, because I can't read my own writing.

8 All right. So paying invoices?

9 A Well, when our department would purchase an item  
 10 from, say, Menards --

11 Q Yes.

12 A -- they would send an invoice to our department,  
 13 and I would get on the system that we used, and  
 14 make sure that that bill or invoice got paid  
 15 from our budget, not --

16 Q Okay.

17 A -- not sewer maintenance or water quality or  
 18 any --

19 Q Some other department?

20 A Some other department.

21 Q Anything that you would include, you know, as a  
 22 general part of your job description and duties  
 23 as a secretary at BWQ? And take a look at  
 24 Exhibit 1, if that's helpful in terms of  
 25 triggering other things that you might have been

<p>1 doing.</p> <p>2 A Huh-uh. Will you say that again?</p> <p>3 Q Of course.</p> <p>4 I'm looking at what your job</p> <p>5 responsibilities and duties were at the time of</p> <p>6 your termination --</p> <p>7 A Okay.</p> <p>8 Q -- essentially.</p> <p>9 A And that's -- okay.</p> <p>10 Q Is that generally -- we covered those?</p> <p>11 A Yes. And that's --</p> <p>12 Q Yes, consistent with Exhibit 1, it has a lot of</p> <p>13 other things that aren't related to what we</p> <p>14 discussed.</p> <p>15 A Yes.</p> <p>16 Q And many are. But if you look at Paragraph 17 of the Complaint, and you add to it, you know,</p> <p>17 making -- reconciling the budget, or keeping the</p> <p>18 budget straight, and paying invoices, do we</p> <p>19 pretty much have what you did?</p> <p>20 A Yes.</p> <p>21 Q Very good.</p> <p>22 Q Now, when you were with the District, I</p> <p>23 assume you had various versions of a handbook?</p> <p>24 A Yeah. You could say that.</p>	<p style="text-align: right;">Page 33</p> <p>1 A City of Muncie's handbook?</p> <p>2 Q Yes.</p> <p>3 A No.</p> <p>4 Q In terms of this handbook, which covers the</p> <p>5 District, you mentioned just a few minutes ago</p> <p>6 that this handbook had changed in scope and</p> <p>7 maybe size over the years, and it got smaller</p> <p>8 rather than bigger.</p> <p>9 So were there -- do you recall how, how</p> <p>10 that came about? Because I know, at one point,</p> <p>11 I think during your EEOC charge with the, the</p> <p>12 agency, you responded to a position statement</p> <p>13 that we submitted. And one of the things I</p> <p>14 think you said was that the handbook became less</p> <p>15 employee friendly. Is that an accurate --</p> <p>16 A Yeah. That's accurate. Accurate. I'm sorry.</p> <p>17 Q And what happened over the course of the years</p> <p>18 to, in your -- as you recall, to make that</p> <p>19 happen?</p> <p>20 A Well, at one point, there was a procedure that</p> <p>21 employees could take, where if they were --</p> <p>22 excuse me.</p> <p>23 Q Can I get you anything? Water?</p> <p>24 A No. I'm fine.</p> <p>25 Q Okay.</p>
<p>1 Q And it was a big handbook. Is that a fair</p> <p>2 description of the handbook? It had a lot in</p> <p>3 it. I'm going to hand you it now and --</p> <p>4 A It was when I started, and then it was whittled</p> <p>5 down to --</p> <p>6 Q So it was bigger when you started than --</p> <p>7 A Yeah.</p> <p>8 Q This is a 2019 version. So let's, let's take a</p> <p>9 look at this for a minute. I'm going to hand</p> <p>10 you what will be marked as Exhibit 3.</p> <p>11 (WHEREUPON, Exhibit Number 3, Personnel</p> <p>12 Policies Handbook - Muncie Sanitary District,</p> <p>13 was marked for identification.)</p> <p>14 Q And I'll hand you, with it, what will be marked</p> <p>15 as Exhibit 4.</p> <p>16 (WHEREUPON, Exhibit Number 4, Employee</p> <p>17 Acknowledgement Form, was marked for</p> <p>18 identification.)</p> <p>19 A Thank you.</p> <p>20 Q And you can see that Exhibit 3 and Exhibit 4</p> <p>21 relate to the 2019 Muncie Sanitary District</p> <p>22 Handbook --</p> <p>23 A Yep.</p> <p>24 Q -- right? Did you ever see the City of Muncie</p> <p>25 Handbook?</p>	<p style="text-align: right;">Page 34</p> <p>1 A They could -- if, if they had a complaint, they</p> <p>2 could file a complaint with the department head.</p> <p>3 And it would go to a, a committee that was,</p> <p>4 like, the -- I think it was the board president</p> <p>5 and a department person. I'm not sure.</p> <p>6 Q Sure. I understand. It was a process for</p> <p>7 complaints?</p> <p>8 A There was a process that they went through. And</p> <p>9 then there would be a ruling, and if I -- you'd</p> <p>10 have to look in this, because I don't --</p> <p>11 Q Let me take you there.</p> <p>12 A I don't think it's in there now.</p> <p>13 Q Let me take that, because I'll show you what I</p> <p>14 think is in there now on that front, but let me</p> <p>15 first go back and ask you whether Exhibit 4 is</p> <p>16 your acknowledgment of receipt of Exhibit 3?</p> <p>17 A Yes.</p> <p>18 Q And that's your signature --</p> <p>19 A Yes.</p> <p>20 Q -- correct, on Exhibit 4?</p> <p>21 A Yes.</p> <p>22 Q Okay. If you look at the very end of Exhibit 3,</p> <p>23 and that would be Page Number 88, that outlines</p> <p>24 what's called "Problem Resolution."</p> <p>25 And take a look at that and see if that's</p>

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1 different from what you just described, if you,  
 2 if you recall?  
 3 A It's similar, yes. Yeah, it's kind of the same  
 4 but...  
 5 Q Let's take a look at Step 3, "In other words, if  
 6 the complaint cannot be solved satisfactorily,  
 7 it may be reviewed by the Board of Sanitary  
 8 Commissioners, president, upon request by the  
 9 District administrator or employee."  
 10 A Uh-huh.  
 11 Q "The President's findings and recommendations  
 12 are binding on the District and the employee."  
 13 A Uh-huh.  
 14 Q "In the event that the employer requests a  
 15 review, he shall first notify the District" --  
 16 "He/she shall first notify the District  
 17 administrator."  
 18 So it looks like the board president makes  
 19 a final decision, but then a review of that can  
 20 be obtained by going through the District  
 21 administrator, which at the time you left, was  
 22 Nikki Grigsby. And she was on leave, obviously,  
 23 so Bill Smith, as the president of the, of the  
 24 board, was handling that function.  
 25 But all of this really goes to the question

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1 A It was -- I don't know. Well, at one point, the  
 2 District was unionized.  
 3 Q I didn't know that.  
 4 A Uh-huh.  
 5 Q I did not know that.  
 6 A Yeah.  
 7 Q And so --  
 8 A They were union. They were -- they had the  
 9 Teamsters back in the day.  
 10 Q And were you part of the bargaining unit?  
 11 A I was not.  
 12 Q Okay.  
 13 A I was, however, a part of the bargaining unit  
 14 after the Teamsters was dismissed by one of the  
 15 mayors that came in, one of the newer mayors  
 16 that came in. And the District employees  
 17 decided they wanted another union, and they  
 18 voted to have a union, and the District sat down  
 19 with employees and financial manager and I don't  
 20 recall who else was --  
 21 Q Uh-huh.  
 22 A -- there from the --  
 23 Q Uh-huh.  
 24 A -- but I was on that committee, yes.  
 25 Q I'm not going to hold you to this, but are you

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1 how this handbook got changed and what you meant  
 2 at the EEOC and from your -- as you're looking  
 3 at this, the complaint procedure may have been  
 4 different?  
 5 A Not at that time -- I mean, I didn't file a  
 6 complaint --  
 7 Q No, I know.  
 8 A -- towards the District --  
 9 Q Right.  
 10 A -- because I --  
 11 Q You mean over your termination?  
 12 A Yes.  
 13 Q Okay.  
 14 A What was the point?  
 15 Q I understand, and, and -- because you had  
 16 already been terminated, and you were terminated  
 17 by the very person who would -- you'd file your  
 18 complaint with?  
 19 A Exactly.  
 20 Q Okay. So I have -- I understand that. But I  
 21 was just looking at the general proposition that  
 22 the handbook, over the years, had become less  
 23 employee friendly?  
 24 A Yeah. And it --  
 25 Q Do you have other examples of that? Or is it...

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1 the union, then the union was disbanded by the  
 2 mayor at that time. I mean, that's part of the,  
 3 part of the crazy environment you were in;  
 4 right? I mean, the mayor and the political  
 5 party changes and all the rules can change.  
 6 A Uh-huh.  
 7 Q And so in that '80s period, you became a little  
 8 bit more involved on the representing employees'  
 9 side, and that might have, that might have  
 10 changed the handbook or, or -- because you have  
 11 an opportunity, as the representative, and the  
 12 union had an opportunity to negotiate whether  
 13 handbook changes would happen or not and the  
 14 employee could say no or yes, but you could have  
 15 an impact?  
 16 A At that point, yeah, but it fell through.  
 17 Q Okay.  
 18 A They didn't go -- they didn't follow through.  
 19 They didn't go through with the union because --  
 20 well, it just didn't go through.  
 21 Q Right.  
 22 A And employees wanted to close shop and it wasn't  
 23 going to happen, so from there on out, it was  
 24 whatever the District wanted to put in a  
 25 handbook, and that's the way you went, whether

<p style="text-align: right;">Page 42</p> <p>1 you liked it or whether you didn't.      2 Q And there were things about that you didn't      3 like, I assume?      4 A Well, there's things that every employee is not      5 going to like --      6 Q Right. Right.      7 A -- I mean, you know...      8 Q Did you -- I had a sense from talking with Rick,      9 that there were -- that you felt -- I don't want      10 to mischaracterize this, but did you -- were you      11 at odds at times with management over how      12 employees were treated?      13 A Yes. Sometimes.      14 Q And would you make that known, from time to      15 time?      16 A I'm not going to lie to you, yes.      17 Q All right. And did you, did you enjoy that a      18 little bit or -- again, I'm looking at      19 conversations you had with Rick in terms of your      20 being involved in change --      21 A No. I didn't enjoy it.      22 Q Okay. What was your general position?      23 A It just -- I believe in people being treated      24 fairly. And when you've got two employees and      25 you've got one being treated one way and one</p>	<p style="text-align: right;">Page 44</p> <p>1 disagreements?      2 A No.      3 Q Did you express that to anybody?      4 A No. Not to my knowledge, no.      5 Q Okay. And how did you -- what was your      6 relationship with Bill Smith on that front?      7 A Wasn't a very good one.      8 Q Okay. And why?      9 A Because when he came out to talk to me, he      10 actually gave me a choice.      11 Q Okay. And that relates to the termination?      12 A Yes.      13 Q And I'm going to get to that. I just want to      14 have some background before that.      15 Were there other issues that you and Bill      16 had discussed where you had disagreement prior      17 to your termination?      18 A Such as?      19 Q That's my question to you.      20 A Well --      21 Q Maybe there isn't any.      22 A I'm just asking because I'm sure that he and I      23 had disagreements on a lot of things --      24 Q Okay.      25 A -- so I mean, unless you're -- you know...</p>
<p style="text-align: right;">Page 43</p> <p>1 being treated another way, that's not fairly.      2 Q Okay.      3 A And yes, that's when I get a little irritated      4 and that's usually when I speak up.      5 Q Okay.      6 A And I never blindsided Rick.      7 Q And, and I'm not -- and I have heard nothing to      8 the contrary, please.      9 I, I just in, in brief conversation with      10 Rick, talking about the employment situation, it      11 sounded like there were things you were unhappy      12 with?      13 A Oh, yeah.      14 Q But you were upfront about it. You were upfront      15 about it?      16 A You betcha.      17 Q Absolutely.      18 A And not only with Rick.      19 Q Right. And --      20 A But that doesn't have anything to do with -- as      21 far as I know.      22 Q With what?      23 A With why I was let go.      24 Q Okay. So there were never points at which you      25 expressed that you were let go because of those</p>	<p style="text-align: right;">Page 45</p> <p>1 Q Well, no. I'm asking you the questions because      2 I need to understand it from your standpoint.      3 A Okay.      4 Q My standpoint isn't going to be anything close      5 to yours.      6 When you say you had disagreements, do you      7 remember --      8 A Well, yes, we had a lot of disagreements on      9 things about the District that should and should      10 not have happened that --      11 Q Okay. Such as, if you remember?      12 A One was the canal.      13 Q Okay. What was that? What happened there?      14 A They built a canal. It was a block long. It      15 cost a lot of money. It cost the rate payers a      16 lot of money. It cost citizens. And it      17 shouldn't have cost anybody that kind of money      18 to get rid of storm water.      19 Q When was --      20 A I mean, there was just things like that.      21 Q Lots of those things?      22 A I mean, it wasn't just employees. It wasn't      23 always a difference of how they treated      24 employees. It was a difference -- you know, I'm      25 a homeowner.</p>

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1 Q Yes.  
 2 A I pay taxes.  
 3 Q Yes.  
 4 A I pay my sewage bill.  
 5 Q Yes.  
 6 A And when they do that and it costs me money to  
     7 pay my sewage bill, and it costs me more money,  
     8 then yes, it ticks me off.  
 9 Q And you would raise that with Bill? You felt  
 10 comfortable enough to do that?  
 11 A I would feel comfortable if it was Biden sitting  
 12 there. I don't care who it is.  
 13 Q Good. All right.  
 14       And other issues, do you remember issues  
 15 like that? Because those, those are -- that  
 16 certainly makes sense. And that was a -- there  
 17 wasn't anything you could do about it, other  
 18 than complain about it?  
 19 A That's exactly right. And I have that right.  
 20 Q Absolutely.  
 21 A I have a right for free speech.  
 22 Q Absolutely.  
 23 A That's all there is to that.  
 24 Q Any other --  
 25 MR. SWIDER: Yes?

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1       MR. WILLIAMSON: Whenever you're ready, if  
 2 we could take a break. Five or ten minutes.  
 3       MR. SWIDER: Oh, okay. Okay. Sure. I  
 4 want to hit this strand, if we can.  
 5 Q Any other issues that you recall, like the  
 6 canal? I mean, that was, that was obviously a  
 7 big issue. How long ago was that canal  
 8 situation?  
 9 A Couple, three years ago.  
 10 Q Okay. Any other issues like that that jump out  
 11 at you?  
 12 A Yeah.  
 13 Q What else?  
 14 A I might as well just get it out there.  
 15 Q Please.  
 16 A There's a project that they did on -- I think it  
 17 was on Ribble, and it looked really nice. The  
 18 sidewalks looked really nice, except they put  
 19 phone poles or utility poles in sidewalks and  
 20 people in wheelchairs have to maneuver around  
 21 them. Now, you tell me that makes sense.  
 22 Sorry.  
 23 Q No. No. I mean, that makes sense. I mean --  
 24 A So yes.  
 25 Q And you live in that community?

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1 A There were a lot of things that happened like  
 2 that that upset me.  
 3 Q Okay. Okay. And that's --  
 4 A And we were made to go to their ribbon cuttings  
 5 and look happy and -- so that they could have a  
 6 lot of people in their pictures for the  
 7 newspaper.  
 8 Q All right. And so as you described, there were  
 9 several of these types of agreements --  
 10 A Yes.  
 11 Q -- or disagreements that you had with Bill?  
 12 A Yes.  
 13 Q Did you have those with any other board  
 14 representatives?  
 15 A No.  
 16 Q Okay. Okay.  
 17 A He was the president.  
 18 Q True. Were you able -- I assume not, but were  
 19 you able to effect any change? Or at least, did  
 20 he understand what you were saying?  
 21 A Well, he understood, but no.  
 22 Q Didn't make a difference?  
 23 A No.  
 24 Q All right. There was a point at which you were  
 25 disciplined for political -- was it political

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1 work on company time? Do you remember that  
 2 situation?  
 3 A I remember being disciplined by Tracy Barton --  
 4 Q Okay.  
 5 A -- who is now under investigation by the FBI.  
 6 Well, he's under an indictment. I don't know  
 7 when their hearing is going to be, but anyway...  
 8 Q That would be the same with Nikki Grigsby?  
 9 A Yes.  
 10 Q Okay.  
 11 A I was written up for the same thing on the same  
 12 day, written two different ways. One, and then  
 13 the second one was so that he could give me time  
 14 off with no pay.  
 15 Q You got suspended for a week?  
 16 A Yes.  
 17 Q Okay.  
 18 A Five days.  
 19 Q Right. All right. I'll give you that  
 20 suspension, if you want to take a break now,  
 21 we'll --  
 22 A Yeah. I need some water.  
 23 Q Absolutely.  
 24       MR. SWIDER: Let's get you water and a  
 25 bathroom break.

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1       (A short recess was had.)		1       and not a change, unless you remember any change	
2 BY MR. SWIDER:		2 which says, "No employee or applicant for	
3 Q All right. We're back on the record --		3 employment will be discriminated against because	
4 A Okay.		4 of race, color, creed, religion, age, national	
5 Q -- and let me give you now what we've marked as		5 origin, sex, disability, genetic information, or	
6 Exhibit 5, I think.		6 any other classification under local, state, or	
7       (WHEREUPON, Exhibit Number 5, June 4, 2012		7 federal law. Equal Employment Opportunity	
8 Memorandum, was marked for identification.)		8 includes, but is not limited to hiring,	
9       MR. WILLIAMSON: Thank you.		9 promotion, transfer, demotion, termination,	
10 Q I've just handed you what has been marked as		10 training."	
11 Exhibit 5 --		11       So it's kind of a limit on the at-will	
12 A Uh-huh.		12 doctrine, so you can be fired at any time for	
13 Q -- and realized that I hadn't really finished		13 any reason, except based on your age, based on	
14 talking to you about Exhibit 3.		14 your disability, and while not stated here,	
15 A Oh.		15 based on FMLA filings. So those would be	
16 Q So let's go back to that for a minute and just a		16 exceptions to, to the rule.	
17 few provisions of the handbook I wanted to go		17       During the course of your employment prior	
18 over with you. And this is going to be based on		18 to your termination, did you ever make a	
19 your recollection again, because this handbook,		19 complaint based on this EEO policy?	
20 as you know, went into effect in 2019. So there		20 A No.	
21 might have been other versions, but to the		21 Q Okay. And if you look at Page 23, I'll ask you	
22 extent that you remember that that's a change,		22 once you get there.	
23 as I go through a few policies, let me know.		23 A Okay.	
24       I'm not -- if you don't say it's a change,		24       MR. SWIDER: Off the record.	
25 that doesn't mean that it isn't. It's just your		25       (A short recess was had.)	
	Page 51		Page 53
1 own recollection, because these are policies,		1       MR. SWIDER: All right. Back on.	
2 that generally, that you would see in any		2 BY MR. SWIDER:	
3 handbook --		3 Q So that looks to be the District's Family and	
4 A Okay.		4 Medical Leave Act policy, and you can see it	
5 Q -- but I just want to be sure that -- so look,		5 stretches for several pages.	
6 first, at Page 1, and you'll see, in Section		6 A Right.	
7 1.1, that second paragraph talks about you, you		7 Q You did take FMLA while you were working for the	
8 and all the other employees in the District as		8 District; did you not?	
9 being at-will employees.		9 A Yes.	
10       Do you know what that means?		10 Q Did you ever feel that you were treated unfairly	
11 A Uh-huh.		11 prior to the termination, based on your FMLA	
12 Q What does that mean to you?		12 time that you took off or requested? Was there	
13 A They don't -- as far as -- they don't -- they		13 anything that suggested to you that they weren't	
14 can come in and say, "We don't need you and		14 following this policy?	
15 you're gone."		15       And you can take a look at the policy if	
16 Q Right. They can fire you for any reason at any		16 you want. You can see on 24, you're entitled to	
17 time for no reason, good, bad, or no reason at		17 12 weeks of paid or unpaid FMLA leave for	
18 all --		18 situations like yours, your own serious health	
19 A Right.		19 condition.	
20 Q -- or you can quit at any time?		20 A Right.	
21 A Right.		21 Q This was a right that law recognizes and that	
22 Q All right. And then Page 2, you see there's an		22 this handbook appears to recognize for several	
23 Equal Employment Opportunity clause?		23 pages. So let me back up.	
24 A Uh-huh.		24       You did take FMLA intermittent leave?	
25 Q And that, too, would probably be pretty standard		25 A Yes.	

<p style="text-align: right;">Page 54</p> <p>1 Q Did you take any leave on a full-time basis? In 2 other words, for a period of time like a week or 3 two weeks or three weeks? I think you might 4 have taken that --</p> <p>5 A I did --</p> <p>6 Q -- kind of leave as well?</p> <p>7 A -- in -- yes, because I did fall and I had a 8 broken femur and a cracked pelvic bone, and I 9 was in a nursing home --</p> <p>10 Q Hmm.</p> <p>11 A -- in September of 2019.</p> <p>12 Q And I've got documentation of that, so we'll 13 look at that, because there are other FMLA 14 leaves you took on an intermittent basis, but 15 that one I'm familiar with because --</p> <p>16 A That was the only one that I believe that I took 17 that was consecutive.</p> <p>18 Q Right. Consecutive weeks. But there was 19 another time when you were off for several 20 weeks. And the reason I know that is because 21 the policy lets people give you sick time --</p> <p>22 A Yes.</p> <p>23 Q -- so that you don't have to dig into your 24 vacation. And I think one of the people that 25 gave you 40 hours --</p>	<p style="text-align: right;">Page 56</p> <p>1 helps the District.</p> <p>2 And so when you would apply for FMLA leave, 3 you would go generally through Sarah Beach; 4 right?</p> <p>5 A Yes.</p> <p>6 Q And is she with the City or with the District?</p> <p>7 A She was actually called the City personnel.</p> <p>8 Q Right. And that's what I'm saying.</p> <p>9 A Yes.</p> <p>10 Q Part of that work sharing would go to the 11 City --</p> <p>12 A Yes.</p> <p>13 Q -- and then Sarah Beach would approve, and I've 14 got documents where she approves your FMLA 15 leave?</p> <p>16 A Yes.</p> <p>17 Q Okay. And to the extent she does that, do you 18 have any knowledge whether they tell someone 19 like Rick Conrad or Ron Barlow why you're taking 20 leave? Or does -- do you know that? You may 21 not know whether she even says anything other 22 than, "Linda is going to be on leave for three 23 weeks"?</p> <p>24 A That -- yeah, I don't know.</p> <p>25 Q You don't know that. Okay.</p>
<p style="text-align: right;">Page 55</p> <p>1 A Yes.</p> <p>2 Q -- was Rick Conrad?</p> <p>3 A Was Rick.</p> <p>4 Q What was that?</p> <p>5 A I believe that's when I had pneumonia.</p> <p>6 Q Okay. But for now, the question is: Did you 7 feel, at all, that you were not given your FMLA 8 rights while you worked for the District?</p> <p>9 A No. Not -- I mean, not -- I mean, I've -- no.</p> <p>10 Q When you asked for it, you got it?</p> <p>11 A Yeah. The personnel department gave it to me, 12 yes.</p> <p>13 Q All right. And, and you may not be fully aware 14 of this, but when you say "the personnel 15 department," my understanding is -- tell me if 16 I'm right -- that while the District and the 17 City are independent bodies, there are certain 18 functions that they have a work-sharing 19 agreement over. Are you familiar with that?</p> <p>20 A Yes.</p> <p>21 Q And that work-sharing agreement, as I understand 22 it, has the District providing benefits help, 23 Melanie Lanich, for instance, does the benefits 24 side for the City and for the District. On the 25 other hand, personnel issues, the, the City</p>	<p style="text-align: right;">Page 57</p> <p>1 Then, if you look at Page 36, that is the 2 American with Disabilities Act policy, ADA 3 policy, and under that policy, if you look at 4 the top of Page 37, the, the first paragraph or 5 second paragraph, I guess both, "If a person is 6 not able to perform the essential functions of a 7 job, even with reasonable accommodation, then 8 the person is not qualified for the position. 9 The District will reasonably accommodate persons 10 with a disability. Such reasonable 11 accommodation may include making facilities 12 readily accessible to individuals with a 13 disability, restructuring jobs, modifying work 14 schedules, modifying equipment or other similar 15 accommodations."</p> <p>16 Did you ever make a complaint under this 17 ADA policy?</p> <p>18 A No.</p> <p>19 Q Did you ever ask for an accommodation? Or were 20 you able to perform the job at all times, 21 notwithstanding any disabilities that you might 22 have had?</p> <p>23 A I was able to perform my job. There were times 24 when I had to call in later than what we were 25 required and, therefore, the FMLA intermittent</p>

	Page 58		Page 60
1	leave came in --	1	A -- notices saying "Hazardous," you know, "Oxygen
2	Q Okay.	2	in use."
3	A -- because there were times when I woke up and I	3	Q Right. Right.
4	couldn't breathe and I would have to do a	4	A You know, it's not flammable.
5	breathing treatment before I could even go to	5	Q I gotcha.
6	work.	6	A Because I went -- I had to jump through hoops
7	Q And you never -- at least I didn't see it in	7	when I worked in sewer maintenance because of
8	your file, you never got disciplined for that?	8	that, so I did have some issues, at that point,
9	A No.	9	with accommodations.
10	Q And -- but it might have triggered FMLA	10	Q Right. And that would have been five to ten
11	intermittent leave?	11	years ago?
12	A Yes.	12	A Yes.
13	Q And you got that leave?	13	Q All right. And we had talked a little bit about
14	A Yes.	14	your changing jobs --
15	Q Okay. Okay. Any -- anything else in terms of	15	A Uh-huh.
16	seeking -- it doesn't sound like you needed any	16	Q -- for a higher rate of pay?
17	reasonable accommodation, other than what you	17	A Uh-huh.
18	exercised under the FMLA for the COPD. When,	18	Q Were the times that you changed just because you
19	when were you diagnosed with COPD?	19	wanted new management or new supervising? In
20	A Oh, my. I don't recall.	20	other words, where you had, "I'm tired of this
21	Q Okay. Long time?	21	guy or this gal, I'm going to make a change"?
22	A I mean, it was a long time. It was, it was	22	A Yeah.
23	before I even went to sewer maintenance.	23	Q Were there any of those types of changes?
24	Q Okay.	24	A There were sometimes that that happened, yeah,
25	A And it just, it progressively got worse and then	25	but, like I said, when I signed up, the job
	Page 59		Page 61
1	I decided to quit smoking and --	1	position that was open at water quality was an
2	Q That helped?	2	office manager's position, and I didn't know if
3	A Yeah, that -- I mean, you know, the damage was	3	it was a dollar more or not, but, yeah.
4	done, but yes, it did help.	4	Q Okay. All right. And, and I think I've already
5	Q Right.	5	asked you this, but just let me confirm. Page
6	A I mean --	6	37, the last paragraph, under the ADA policy, it
7	Q And so that would have been even before you went	7	says, "Any individual who believes he or she has
8	to BWQ?	8	received treatment inconsistent with the
9	A Uh-huh. Yes.	9	policies set forth above, or any other
10	Q Okay. And I noticed when we came into the	10	requirement of the American with Disabilities
11	deposition today, you had oxygen with you?	11	Act," ADA, "can file a complaint within 90 days
12	A Yes.	12	of the date of the alleged discriminatory act or
13	Q Did you ever have that oxygen at work?	13	practice with the District ADA coordinator,"
14	A I don't believe I had it at the Bureau.	14	that is the district administrator.
15	Q Okay.	15	Other -- we talked about once you were
16	A I did have it at sewer maintenance. And it's	16	discharged, this process didn't make much sense
17	not oxygen. It's --	17	to you, but you didn't utilize the process or
18	Q Okay.	18	need to utilize the process prior to the
19	A -- it's a concentrator.	19	termination; did you?
20	Q Okay.	20	A No.
21	A All it does is, I can plug it into a -- an	21	Q Okay. Then I'm looking at Page 85. I'll join
22	electrical outlet, it recirculates the air.	22	you there, and, and I don't think, I don't think
23	Q Oh, okay.	23	you were ever really written up. I didn't see
24	A So you don't have to have all the --	24	anything in the file that -- unless we go back a
25	Q The kind of --	25	long time.

<p style="text-align: right;">Page 62</p> <p>1 Other than what we'll look at on that      2 political front that we talked about, were you      3 ever written up for any of these offenses on      4 Pages 84 or 85?</p> <p>5 And I'm not trying to set you up. I don't      6 have any write-ups. I'm just asking you whether      7 there might have been something I'm not aware      8 of?</p> <p>9 A Not that I'm aware of.</p> <p>10 Q I think the write-up on the political activity      11 at work included -- the only thing I could find      12 here is insubordination, is what was listed on      13 the write-up. And that's -- you see that as the      14 30- -- Number 37 on Page 86. That's the only      15 place I see "insubordination," and we'll talk      16 about that write-up.</p> <p>17 But other than that, there's nothing else      18 that you recall being written up or disciplined      19 for; is there?</p> <p>20 A The only thing I can remember being written up      21 for was I cussed on the radio one time. I said,      22 "Damn."</p> <p>23 Q How long ago was that?</p> <p>24 A When I was an inspector.</p> <p>25 Q All right.</p>	<p style="text-align: right;">Page 76</p> <p>1 work?      2 A Yes.      3 Q You weren't prohibited from doing that. It was      4 just you couldn't do it on the clock?      5 A Yes. And I -- I'll shut up.      6 Q Let me hand you your next evaluation. If I've      7 got this in the right order, this will be      8 Exhibit 8.</p> <p>9 (WHEREUPON, Exhibit Number 8, Performance      10 Appraisal - February 17, 2017, was marked for      11 identification.)</p> <p>12 Q Do you recognize this document?</p> <p>13 A Yes.</p> <p>14 Q And what is this?</p> <p>15 A It's another -- it's an evaluation from Rick      16 Conrad.</p> <p>17 Q So by then, you had moved to Bureau of Water      18 Quality?</p> <p>19 A Yes.</p> <p>20 Q And that was a move you wanted to make?</p> <p>21 A Yes.</p> <p>22 Q Did you make more money in that move? Or is      23 this one of the moves that you just wanted to      24 get out from under --</p> <p>25 A No. It wasn't any more money.</p>
<p style="text-align: right;">Page 63</p> <p>1 A That was a long time ago, because I was an      2 inspector and it was like 100 in the shade and a      3 lady made a complaint and wouldn't answer her      4 door. And when I got back out to my truck, I      5 said "Damn" on the radio and I got written up      6 for that.</p> <p>7 Q Well, I hope you've cleaned up your language      8 since then.</p> <p>9 A Yeah, it only got worse.</p> <p>10 Q Nothing else? Nothing else?</p> <p>11 A But other than that, I'm sure I've -- you know,      12 over 40 years, I'm sure I got written up.</p> <p>13 Q I mean, I think I told --</p> <p>14 A Because if it comes to my mind, it's going to      15 come out my mouth.</p> <p>16 Q That makes sense.</p> <p>17 A Most of the time.</p> <p>18 Q That makes sense.</p> <p>19 A That's all I can say.</p> <p>20 Q I gotcha. And, and when Aaron and I were doing      21 discovery, I think we said, "Hey, ten years is      22 plenty. We don't need to go back beyond that,"      23 and that's even too long probably. All right.</p> <p>24 The only other thing we've already talked      25 about and that is the problem resolution</p>	<p style="text-align: right;">Page 77</p> <p>1 Q Okay. So this would have been a culmination a      2 little bit of being out of Barton's department?</p> <p>3 A Yes.</p> <p>4 Q Okay. And it looks like this is another good      5 review. You got an 84.1, which isn't much      6 higher than the 83, the year before, but I      7 assume you got along better with Conrad?</p> <p>8 A Well, yes, and the fact that moving to the      9 Bureau of Water Quality, I wasn't as familiar      10 with that department and what it, what it did.      11 So I was just learning, so I didn't --</p> <p>12 Q Expect huge ratings?</p> <p>13 A Yes.</p> <p>14 Q Makes sense.</p> <p>15 A Yeah, because in sewer maintenance, I cleaned      16 sewers before Tracy was even working for the --</p> <p>17 Q Uh-huh. Uh-huh.</p> <p>18 A -- I mean, before he even came to work for the      19 District, you know, so, yes.</p> <p>20 Q Let me, at a broader level, ask you this      21 question, because I think I know how you're      22 going to answer, but I want to understand, how      23 was your relationship with Rick Conrad when you      24 started?</p> <p>25 And did that change at all while you worked</p>

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1 under Rick, because you worked under Rick until  
 2 you left?  
 3 A Well, as far as I know, we didn't have a bad  
 4 relationship. And I always told him I would be  
 5 up front with him and I wouldn't blindside him  
 6 with anything because I'm notorious for stating  
 7 my opinion. I mean, that's just who I am.  
 8 Q Right. Right.  
 9 A And I always told my bosses that if I was going  
 10 to -- if I did something that I thought might  
 11 come back at them, then I would tell them.  
 12 Q Right.  
 13 A And that's what I did.  
 14 Q Okay. Yeah. I have nothing that suggests to  
 15 the contrary --  
 16 A So --  
 17 Q -- that the two of you didn't get along well.  
 18 A I mean, I -- you know.  
 19 Q This review, you're six months into it, it looks  
 20 like, and you didn't disagree with the review;  
 21 correct?  
 22 A No.  
 23 Q All right. And again, it's a good review. In  
 24 other words, your overall rating is going to be  
 25 in the "very good" category, I think. Right?

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1 Anything -- it looks like on the form itself,  
 2 anything between 80 and 89 is very good --  
 3 A Yes.  
 4 Q -- right? And your overall rating was 84.1, so  
 5 that's comfortably in the very good range;  
 6 correct?  
 7 A Right.  
 8 Q Taking these in chronological order, at least  
 9 trying to do so that we can keep our timeline  
 10 intact, and I'm going to hand you, now, one of  
 11 the first absences, FMLA-type situations that I  
 12 have had, and really, the only ones that I have.  
 13 Again, maybe because we're only going back ten  
 14 years or so, this will be marked as Exhibit 9.  
 15 I'm sorry. That's going to be yours to mark.  
 16 (WHEREUPON, Exhibit Number 9, FMLA  
 17 Approval, was marked for identification.)  
 18 Q Now, you may not have seen this document before.  
 19 Do you recall ever having seen it?  
 20 A Pardon?  
 21 Q You may not have seen this document. I don't  
 22 see your signature on it.  
 23 A No. I don't -- I never saw this.  
 24 Q Okay. Let's look at the event that it purports  
 25 to relate to. It looks like FMLA approval, if

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1 you look at the first page of Exhibit 9,  
 2 starting on 2/23/17. So we're going back to  
 3 2017. And it looks like you were approved for  
 4 intermittent FMLA, and the second page gives us  
 5 a sense of who Sarah Beach was. Remember, we  
 6 talked about the personnel function being  
 7 handled by the City --  
 8 A Yes.  
 9 Q -- because you can see she's with the City;  
 10 correct?  
 11 A Yes. I'm sorry.  
 12 Q And she's granting the FMLA. We got -- I've got  
 13 nothing else. I don't think the District has  
 14 anything else that I'm aware of on this, other  
 15 than the approval of the leave being  
 16 communicated to Rick Conrad. What was this  
 17 leave for? Do you remember? It looks like some  
 18 kind of episodes.  
 19 A The only -- it would have had to have been  
 20 pneumonia, because when I'm in and out of the  
 21 hospital --  
 22 Q Yes.  
 23 A -- with pneumonia, because of my COPD --  
 24 Q Yep.  
 25 A -- it, it --

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1 Q Knocks you out?  
 2 A Yeah, it does. That's the only thing I can  
 3 think of --  
 4 Q Okay.  
 5 A -- in February of 2017.  
 6 Q All right. All right. So intermittent leave  
 7 would let you take off when you needed to or  
 8 when you said --  
 9 A For my breathing treatment.  
 10 Q -- or you know, come in later, because I need a  
 11 breathing treatment. This could have been  
 12 consistent with that?  
 13 A Yes.  
 14 Q And you've already testified, there's nothing  
 15 about this you were upset about. Everything was  
 16 handled properly as far as you're aware?  
 17 A As far as I'm aware, yes.  
 18 Q Would you have shared details -- from the  
 19 documentation, from my understanding, Rick  
 20 Conrad would not know what this was all about.  
 21 Did you share with him what this was all about  
 22 or do you even recall?  
 23 A I don't recall.  
 24 Q Okay. Possible that you did?  
 25 A It's possible, but I don't recall.

<p style="text-align: right;">Page 82</p> <p>1 Q Possible. Okay. Did he give you any trouble 2 over this leave? 3 A Not that I recall. 4 Q Okay. All right. 5 And remember, that's February of 2017. 6 Now, I'm going to give you a document in April 7 of 2017 related maybe to the same thing, maybe 8 to something else. And this will be marked as 9 Exhibit 10. 10 (WHEREUPON, Exhibit Number 10, April 3, 11 2017 email, was marked for identification.) 12 A Thank you. 13 Q Uh-huh. 14 A It would have had to have been -- 15 Q So this is a few months later. It looks like 16 you're, again, approved for FMLA leave. It's 17 not much different from the approval you already 18 had on file. Let's see. 19 A Trying to remember if that's when I had surgery 20 and got pneumonia in both lungs. 21 Q Well, I'll be able to help you out because there 22 was this point -- remember, I was telling you -- 23 when people were giving you their sick leave. 24 Let's take a look at that. 25 A That I...</p>	<p style="text-align: right;">Page 84</p> <p>1 Q And it is, in this one, for whatever reason, 2 Nikki is copied, and I don't see her copied in 3 Exhibit 9, but I don't know if that has any 4 significance. Are you aware of any significance 5 there? 6 A No. 7 Q Okay. But again, no problem as far as you 8 recall in connection with getting that leave and 9 taking that leave; correct? 10 A (Shakes head.) 11 Q All right. 12 A No. 13 Q All right. Let me give you now what will be 14 marked as 11, Exhibit 11. And this is your next 15 performance evaluation. 16 (WHEREUPON, Exhibit Number 11, Performance 17 Appraisal - May 26, 2017, was marked for 18 identification.) 19 Q And I think you got the last one late. That's 20 why they're both the same year. I'm missing 21 one. Okay. Here it is. Okay. 22 So the last evaluation I think we looked at 23 was in February of 2017. This one is in May. I 24 don't know why this was so close together, but 25 it looks like another good review. This one is</p>
<p style="text-align: right;">Page 83</p> <p>1 Q Maybe. 2 A I know there for a while, I didn't know if I was 3 going to make it or not. 4 Q Okay. You know what? I have this written out 5 here. 6 No. What I get -- that happens in April 7 and May of 2019 -- 8 A Okay. 9 Q -- and then -- 10 A That's when I had that. 11 Q Okay. Yeah. It starts with March of 2018, 12 we'll look at that. But then in April and May 13 of 2019, Rick, Chuck Jones and Barlow gave you 14 time, so that was, like, three weeks? 15 A Yes. 16 Q And then in October of 2019, I think you had two 17 more weeks. So we'll look at that separately 18 when we get there. 19 A Okay. 20 Q Anything else that you recall about this? 21 A No. 22 Q Okay. 23 A Had to do with pneumonia and COPD. 24 Q Makes sense. 25 A That's all I can say.</p>	<p style="text-align: right;">Page 85</p> <p>1 from Rick, and this score is continuing to go 2 up, I think, a little bit. 3 Any issues with this review? Any issues 4 with this review or... 5 A Nope. I didn't have any. 6 Q Okay. There is one note I want to just cover 7 with you, and that is on the second-to-the-last 8 page, Item 2, Rick says, "Reduce the amount of 9 criticism that is not constructive. Handle it 10 discreetly," did you have any idea what that 11 related to? Maybe just speaking your mind 12 again. I don't know. 13 A Apparently, I said or did something outside the 14 office that got -- I mean, people say things 15 about their bosses -- 16 Q Right. 17 A -- to other people, and I apparently said 18 something and it got back to him and that was... 19 Q But you don't recall specifically? 20 A No, I don't remember. 21 Q I mean, it could even be you're criticizing the 22 board or the board president? 23 A It could have been. I don't know. 24 Q Okay. Okay. It wasn't a big deal to you at the 25 time?</p>

<p style="text-align: right;">Page 86</p> <p>1 A Didn't seem like it.</p> <p>2 Q And it doesn't look like it was a big deal to 3 him, because, again, your overall rating was 4 comfortably in the very good range; correct?</p> <p>5 A Yes.</p> <p>6 Q All right. Going to hand you what will be 7 marked as Exhibit 12. (WHEREUPON, Exhibit Number 12, Position 9 Description - Secretary, was marked for 10 identification.)</p> <p>11 Q And I think this is simply the job description 12 you had, now as the secretary of the Bureau of 13 Water Quality. Again, I don't know when you 14 would have received it, because it's not signed 15 off on. So my question to you is: Regardless 16 of -- and it looks to be consistent, because 17 you've got the same duties, answer telephone, 18 greet office visitors, determine nature of call 19 or visit, you know, that first bullet point. I 20 guess the bottom line is, your job didn't change 21 in terms of what you described early in the 22 deposition that was in the Complaint that you 23 added to, that you were still doing the same 24 function, but now you're doing it in the Bureau 25 of Water Quality; is that correct --</p>	<p style="text-align: right;">Page 88</p> <p>1 for giving you intermittent leave in 2018? In 2 other words, when you went to the hospital, 3 whatever that was for -- do you remember what 4 that was for?</p> <p>5 A I had a hiatal hernia.</p> <p>6 Q Okay.</p> <p>7 A And they operated on me.</p> <p>8 Q And maybe that -- the recovery of that, you 9 would have to have intermittent time off.</p> <p>10 Again, it's not -- what I have is this and we 11 don't know --</p> <p>12 A Right.</p> <p>13 Q -- unless you shared it with Rick, what that 14 was. But I guess, my question to you was, any 15 dissatisfaction with the way this intermittent 16 leave was handled, as opposed to the previous 17 intermittent leaves?</p> <p>18 A No.</p> <p>19 Q Okay. And do you recall talking with Rick at 20 all about what, what this was related to?</p> <p>21 A Yeah. I mean, he and I discussed it after I got 22 back to work.</p> <p>23 Q Okay. So in the --</p> <p>24 A Because I, I felt like he deserved an 25 explanation.</p>
<p style="text-align: right;">Page 87</p> <p>1 A Pretty much.</p> <p>2 Q -- generally? Any differences that you recall?</p> <p>3 A No. I guess not...</p> <p>4 Q Same kind of job, or same job and 5 responsibilities, and this was the secretary 6 position. All right. Now, I'm going to give you what will be marked as Exhibit 13. (WHEREUPON, Exhibit Number 13, March 21, 10 2018 email, was marked for identification.)</p> <p>11 Q All right. So now we're -- this is going to be 12 March of 2018, and, "Linda has been approved for 13 FMLA for two separate conditions," so one of 14 these, again, could be COPD. I have no idea 15 what the second condition is; do you?</p> <p>16 A I had to, I had to have some surgery done, and 17 during that surgery, it was supposed to be as an 18 outpatient, but they debated on whether or not 19 to let me go home because of my oxygen level.</p> <p>20 Q Okay.</p> <p>21 A I'm trying to remember, because I do believe 22 they did let me go home, but I ended up back in 23 the ER that night.</p> <p>24 Q Nothing you remember beyond the breathing, 25 pneumonia, COPD issues that would have called</p>	<p style="text-align: right;">Page 89</p> <p>1 Q So that would have been the COPD. Did he know 2 you had COPD prior to this?</p> <p>3 A He knew, yeah, he knew that I had COPD.</p> <p>4 Q He may not have known about the surgery or the 5 reason for that?</p> <p>6 A And then I told him about the surgery.</p> <p>7 Q Okay. But you didn't have any problems with him 8 or otherwise --</p> <p>9 A No.</p> <p>10 Q -- as a result of the surgery --</p> <p>11 A No.</p> <p>12 Q -- or the leave; correct?</p> <p>13 A No.</p> <p>14 Q So that would be yes, correct?</p> <p>15 A Yes.</p> <p>16 Q All right. When you see the transcript, 17 sometimes these things get confusing. All 18 right.</p> <p>19 Let me hand you another performance appraisal. This will be marked as Exhibit 14.</p> <p>21 (WHEREUPON, Exhibit Number 14, Performance Appraisal - August 2, 2018, was marked for identification.)</p> <p>24 Q All right. This looks to be a review that you 25 received in August of 2018. Is that your</p>

<p style="text-align: right;">Page 90</p> <p>1 signature on the last page?</p> <p>2 A Yes.</p> <p>3 Q And this gives you even a higher rating of 86.9,</p> <p>4 and no specific areas needing improvement. Take</p> <p>5 a look at it, see if, if you agree with me.</p> <p>6 This is a pretty good review.</p> <p>7 A I'm sorry. What?</p> <p>8 Q Take a look at this review, is there anything</p> <p>9 about this to you that doesn't seem fair or</p> <p>10 accurate?</p> <p>11 A No.</p> <p>12 Q He's giving you outstanding now in certain</p> <p>13 categories; correct?</p> <p>14 A Yes.</p> <p>15 Q All right. So again, no disagreement or problem</p> <p>16 with this review; correct?</p> <p>17 A No.</p> <p>18 Q All right. This will be Exhibit 15. This</p> <p>19 relates to a wage increase, I think.</p> <p>20 (WHEREUPON, Exhibit Number 15, Wage</p> <p>21 Increase, was marked for identification.)</p> <p>22 Q So now we're looking at September of 2018. Is</p> <p>23 that your signature at the bottom of the page?</p> <p>24 A Yes.</p> <p>25 Q And this looks like a wage increase; does it</p>	<p style="text-align: right;">Page 92</p> <p>1 A Okay. The Sanitary District increased the</p> <p>2 longevity pay for all the District employees.</p> <p>3 Q Okay.</p> <p>4 A Longevity is based on the number of years of</p> <p>5 office.</p> <p>6 Q Sure.</p> <p>7 A And it depends -- and it says in the handbook,</p> <p>8 depends on how many years you've been there as</p> <p>9 to how much longevity pay you get. Well, they</p> <p>10 changed it, and that's what Exhibit 15 is. That</p> <p>11 was that increase.</p> <p>12 Q Okay.</p> <p>13 A So I'm not the only one that got an increase at</p> <p>14 that point in time.</p> <p>15 Q Okay.</p> <p>16 A Okay? And then in December, this increase would</p> <p>17 have taken place in -- that would have been the</p> <p>18 yearly increase, because they -- they gave us a</p> <p>19 yearly percentage raise. And I don't recall</p> <p>20 what that was, but everybody in the Sanitary</p> <p>21 District got, like, a 2 percent increase or a 3</p> <p>22 percent increase or whatever.</p> <p>23 Q So neither of these increases reflected the</p> <p>24 quality of your work?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 91</p> <p>1 not?</p> <p>2 A Yes.</p> <p>3 Q You went from 19.03 an hour to 19.28 an hour?</p> <p>4 A Yes. When was this?</p> <p>5 Q This is in September of 2018. So this would</p> <p>6 have been a year before your termination, and a</p> <p>7 couple months. There's another -- let me give</p> <p>8 you another increase.</p> <p>9 A Okay. No, I know what it is. Everybody got</p> <p>10 that increase.</p> <p>11 Q Okay.</p> <p>12 A Well, let me put it this way --</p> <p>13 Q Yeah.</p> <p>14 A -- the Sanitary District changed the -- no.</p> <p>15 There goes my memory.</p> <p>16 Q Let me give you another document that might</p> <p>17 help. We'll put them together, because there's</p> <p>18 another increase that comes shortly thereafter.</p> <p>19 And this will be Exhibit 16.</p> <p>20 (WHEREUPON, Exhibit Number 16, Wage</p> <p>21 Increase, was marked for identification.)</p> <p>22 A Longevity pay.</p> <p>23 Q Oh, Exhibit 15? Or... so now we're talking</p> <p>24 about three months later, you get another</p> <p>25 increase?</p>	<p style="text-align: right;">Page 93</p> <p>1 Q And one of the things I've noticed here is --</p> <p>2 take a look at Exhibit 15, and this, this may be</p> <p>3 inconsequential, but you see your title in</p> <p>4 September is secretary. And then when I look at</p> <p>5 it in December, it looks like office manager,</p> <p>6 and I know you went back and forth in those two</p> <p>7 functions. But does that have anything to do</p> <p>8 with this?</p> <p>9 A It could, but -- no, I'm going to say no,</p> <p>10 because the title --</p> <p>11 Q It never meant anything? It kept going back and</p> <p>12 forth, it looks like?</p> <p>13 A Yeah.</p> <p>14 Q All right.</p> <p>15 A I signed -- the job I signed up in water quality</p> <p>16 was office manager. Then it was later said that</p> <p>17 I was to take it off my emails and put</p> <p>18 "secretary." Fine. No problem. Whatever. I</p> <p>19 don't care. Whatever.</p> <p>20 Q So it didn't matter?</p> <p>21 A No, it didn't.</p> <p>22 Q Distinction without a difference?</p> <p>23 A Yeah.</p> <p>24 Q Gotcha.</p> <p>25 A I mean, it was just, you know...</p>

<p style="text-align: right;">Page 94</p> <p>1 Q Same job, same pay?</p> <p>2 A Yeah. Exactly. That's like in sanitation, 3 they've got an office manager. She does the 4 same functions.</p> <p>5 Q As the secretary?</p> <p>6 A Uh-huh.</p> <p>7 Q Got it. That's yours. Or that's actually, 8 ultimately, going to be Tracy's.</p> <p>9 A Well, I'm trying to keep them, trying to keep 10 them in order for you.</p> <p>11 Q I know. All right. This will be Exhibit 16, 12 maybe -- 17.</p> <p>13 (WHEREUPON, Exhibit Number 17, Donation of 14 Hours, was marked for identification.)</p> <p>15 Q Now, this, Exhibit 17, those are your -- that's 16 your signature at the bottom of both pages; 17 right?</p> <p>18 A Yes.</p> <p>19 Q And let's look at the time frame here, the first 20 page is in, in April of 2019.</p> <p>21 A Uh-huh.</p> <p>22 Q Second page is in May of 2019. This looks like 23 at least a couple of weeks off that might have 24 been, might have -- you might have borrowed or 25 somebody might have extended you their sick</p>	<p style="text-align: right;">Page 96</p> <p>1 time --</p> <p>2 A No.</p> <p>3 Q No?</p> <p>4 A Because you have to exhaust all your time.</p> <p>5 Q Okay. Let's take a look at the handbook so 6 we're all on the same page, because I know it's 7 in there. That's going to be back to Exhibit 3, 8 and see if I can find it first, there.</p> <p>9 A I used to know this back and forth.</p> <p>10 Q Yeah. I've dealt with this before. It looks 11 like Page 18, "Sick Leave Bank," page 18 to 20, 12 let's take a look here. So it looks like at the 13 end of 4.4 on Page 21, just what you were 14 talking about. Do you see right before 4.5, it 15 says, "The District allows employees to assign 16 their sick leave bank benefits to other District 17 employees"?</p> <p>18 A Yes.</p> <p>19 Q So these would be the rules you're talking 20 about, aren't they? "The employee assigning his 21 or her sick leave bank benefits must maintain a 22 balance in their own sick leave bank of 160 23 hours. The employee assigning his or her sick 24 leave bank benefits must assign those benefits 25 in increments of 40 hours. The assignment must</p>
<p style="text-align: right;">Page 95</p> <p>1 time?</p> <p>2 A Yes.</p> <p>3 Q How did that work? Do you remember?</p> <p>4 A If, if a Sanitary District employee runs out 5 of -- exhausts all of their extended -- all 6 their time --</p> <p>7 Q Right.</p> <p>8 A -- the extended time --</p> <p>9 Q Right.</p> <p>10 A -- then another employee of the Sanitary 11 District can donate up to, I think it's 80 12 hours, no less than 40, but no more than 80, and 13 then they have to have 80 remaining hours, in 14 their extended sick bank, in other words they 15 can't exhaust their sick bank to give to 16 somebody else --</p> <p>17 Q Okay.</p> <p>18 A -- that way, if employees are off and need a 19 paycheck, then if, if people want -- other 20 employees want to donate time, they can if they 21 have it.</p> <p>22 Q So by this point, you would have exhausted your 23 extended sick leave --</p> <p>24 A Yes.</p> <p>25 Q -- and to prevent you from going into vacation</p>	<p style="text-align: right;">Page 97</p> <p>1 be noted on a Personnel Information Form, and 2 signed by both the employee and the department 3 head. Prior to the Personnel Information Form 4 being processed to the HR department, the 5 District administrator must approve the 6 assignment. And only sick leave bank benefits 7 may be assigned to another employee. Vacation 8 and personal days may not be assigned to another 9 employee."</p> <p>10 So I think it's just what you had said. 11 You had exhausted your sick leave bank, and you, 12 you wouldn't have been paid if other employees 13 had not contributed to your --</p> <p>14 A Exactly.</p> <p>15 Q -- time off. Okay.</p> <p>16 And do you recall, when we looked back at 17 Exhibit 17, this suggested you would have at 18 least been off two weeks? Because you got 40 19 hours from Chuck --</p> <p>20 A Yes.</p> <p>21 Q Who is Chuck?</p> <p>22 A That may, that may have been when I had the 23 surgery, because I was off, because it was 24 supposed to be a simple surgery, but it wasn't. 25 I mean, it, it ended up turning out to be more</p>

<p style="text-align: right;">Page 98</p> <p>1 than simple surgery.</p> <p>2 Q This was not the -- there was a point at which</p> <p>3 you fell and --</p> <p>4 A That was later.</p> <p>5 Q That was later. We'll get to that.</p> <p>6 A That was in September.</p> <p>7 Q Okay. So who is Chuck?</p> <p>8 A Chuck Jones.</p> <p>9 Q Yeah. Who is that?</p> <p>10 A He works in the lab at the Bureau.</p> <p>11 Q And then, of course, Rick Conrad gave you time?</p> <p>12 A Yes.</p> <p>13 QOkay. Which I think -- I mean, does he get</p> <p>14 to -- I assume he made that decision himself --</p> <p>15 A Yes.</p> <p>16 Q -- to give you that time --</p> <p>17 A Yes.</p> <p>18 Q -- which also is consistent with having a pretty</p> <p>19 good relationship with each other; wouldn't you</p> <p>20 agree?</p> <p>21 A Yes.</p> <p>22 QOkay. And when -- how much leave time would you</p> <p>23 have gotten each year? Do you know? That you</p> <p>24 would have exhausted by this point in 2019?</p> <p>25 AWell, I had 25 vacation days.</p>	<p style="text-align: right;">Page 100</p> <p>1 (WHEREUPON, Exhibit Number 18, Performance</p> <p>2 Appraisal - August 12, 2019, was marked for</p> <p>3 identification.)</p> <p>4 QMany people cringe when they get their</p> <p>5 evaluations during the course of these</p> <p>6 depositions, but yours are pretty solid; aren't</p> <p>7 they?</p> <p>8 This one is in August of 2019. Is that</p> <p>9 your signature on the last page?</p> <p>10 AYes.</p> <p>11 QAll right. And would you agree this is another</p> <p>12 very good review?</p> <p>13 AYes.</p> <p>14 QOkay. Any issues or concerns with this review?</p> <p>15 ANo.</p> <p>16 QNow, as, as we get to the allegations of the</p> <p>17 claim, we're going to be looking for evidence of</p> <p>18 who discriminated or might have discriminated,</p> <p>19 and why.</p> <p>20 Would you agree with me that, at least</p> <p>21 based on this review, and the fact that Rick</p> <p>22 Conrad had just given you the 40 hours of</p> <p>23 extended sick leave, there's nothing about Rick</p> <p>24 that would suggest to you that he was</p> <p>25 discriminating against you based on your</p>
<p style="text-align: right;">Page 99</p> <p>1 Q And then --</p> <p>2 A And 12 sick/personal days.</p> <p>3 Q Okay.</p> <p>4 A And then you accumulate .6 each pay, of</p> <p>5 sick/personal or extended sick time.</p> <p>6 Q Okay. So you, you had used quite a bit of time</p> <p>7 by this point; correct?</p> <p>8 AUh-huh.</p> <p>9 Q You got to say "yes."</p> <p>10 A Yes. I'm sorry.</p> <p>11 Q That's all right. At, at -- who, who would have</p> <p>12 been performing your job when you were off like</p> <p>13 this? Do you know even?</p> <p>14 ANo. I'm not sure.</p> <p>15 Q Okay.</p> <p>16 A Probably Jill, but I don't know.</p> <p>17 Q That's Jill Harris?</p> <p>18 AHarris.</p> <p>19 Q Okay. Okay. When you would come -- when you</p> <p>20 came back to work, were things in order for you?</p> <p>21 In other words, you didn't have a huge backlog</p> <p>22 of things to do?</p> <p>23 ANo.</p> <p>24 Q Okay. So let me give you your next performance</p> <p>25 evaluation, marked as Exhibit 18.</p>	<p style="text-align: right;">Page 101</p> <p>1 disability or based on your age or based on your</p> <p>2 use of FMLA time? Would you agree with that?</p> <p>3 A Yes, I would agree with that.</p> <p>4 THE WITNESS: Can we take a break?</p> <p>5 MR. SWIDER: Yes. Absolutely.</p> <p>6 (A short recess was had.)</p> <p>7 BY MR. SWIDER:</p> <p>8 Q All right. So we just looked at Exhibit 18.</p> <p>9 And let's look at Exhibit 19.</p> <p>10 (WHEREUPON, Exhibit Number 19, October 10,</p> <p>11 2019 email, was marked for identification.)</p> <p>12 Q Which is in October of 2019, and may not have</p> <p>13 been anything you've seen before, Linda, so</p> <p>14 let's look at this.</p> <p>15 All right. So this looks like -- now,</p> <p>16 we're in October of 2019, Linda --</p> <p>17 AUh-huh.</p> <p>18 Q -- and this must be related to your accident?</p> <p>19 A This -- yeah.</p> <p>20 Q Okay. What happened?</p> <p>21 A In September, I fell at home and broke my femur</p> <p>22 and my -- cracked my pelvic bone and was off</p> <p>23 while I was admitted to the hospital. Then I</p> <p>24 was in the hospital for a week and then I was in</p> <p>25 a nursing home for a while.</p>

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1 Q Okay. And were you off for six weeks or was  
 2 that just what was expected? "Her latest  
 3 physician's statement said she'll be" --  
 4 A Oh, darn.  
 5 Q -- "off for six weeks."  
 6 A I know I was off for a while, a good while, but  
 7 I don't think I was off -- I don't remember if I  
 8 was off for six weeks or not. I know when I  
 9 went back to work, I was -- I went back to work  
 10 with my walker.  
 11 Q Okay.  
 12 A And it was a good thing I worked at Waterfall  
 13 because they have an elevator.  
 14 Q Yeah. I can't image. The femur, that's got to  
 15 be pretty bad.  
 16 A That's the bone from your knee to your --  
 17 Q To your pelvic bone. Did you fall off of  
 18 something?  
 19 A No.  
 20 Q You need a better story. You were cleaning the  
 21 gutters?  
 22 A No. I just tripped and fell, tripped on an item  
 23 of clothing, thanks to my new dog.  
 24 Q Oh, the dog. Well, that's at least a good  
 25 thing. All right.

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1 This looks like you did get more donations.  
 2 Let me look at that. All right.  
 3 This will be Exhibit 20.  
 4 (WHEREUPON, Exhibit Number 20, Donation of  
 5 Time, was marked for identification.)  
 6 Q All right. So is that your signature -- oh, no,  
 7 "unable to sign." You may not have even been at  
 8 work?  
 9 A Yeah. I wasn't at work.  
 10 Q Who is Tom? It looks like you were getting more  
 11 donated time, extended sick time from this, in  
 12 this case, Tom Noble and Terry Rickert. Who are  
 13 these two?  
 14 A Terry Rickert and Tom both worked at sewer  
 15 maintenance prior to going to sanitation.  
 16 Q So would these be co-employees?  
 17 A Yes.  
 18 Q Okay. And it looks like, at least when Sarah  
 19 Beach is discussing this, she says, "I need to  
 20 inform her when the FMLA leave will be  
 21 exhausted" -- oh, I'm sorry. It's the next  
 22 paragraph.  
 23 "I also need to let her know she's out of  
 24 extended time, and unless there's a donation, we  
 25 will start to use her vacation until she had 40

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1 hours of time remaining."  
 2 So did you maybe use vacation time as well  
 3 as get the extended leave to make it last for  
 4 the number of weeks you were out? Because you  
 5 were probably out more than two weeks; right?  
 6 A Yes.  
 7 Q Okay. And then, you wouldn't know who was  
 8 performing your job while you were gone; right?  
 9 I mean, it may have been Jill Harris?  
 10 A It may have been.  
 11 Q You don't know?  
 12 A Yeah. I do not know who for sure.  
 13 Q Okay. Got it. And then it looks like you were  
 14 able to come back to work without restrictions,  
 15 and this will be Exhibit 21.  
 16 (WHEREUPON, Exhibit Number 21, Central  
 17 Indiana Orthopedics letter - November 7, 2019,  
 18 was marked for identification.)  
 19 Q So, have you seen this document before?  
 20 A Pardon?  
 21 Q Have you seen Exhibit 21 before?  
 22 A Yes, I had to take it to work.  
 23 Q Okay. So did you return to work on November the  
 24 4th?  
 25 A If that was a Monday, yes.

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1 Q Okay. Let's take a quick look at what it is.  
 2 Yep, November 4th, 2019 would have been a  
 3 Monday.  
 4 A Okay.  
 5 Q Okay. So that's -- that sounds about right to  
 6 you --  
 7 A Yes.  
 8 Q -- or looks right?  
 9 And you came to work with no restrictions;  
 10 right?  
 11 A Yes.  
 12 Q So you had healed pretty well? That's great.  
 13 You didn't have -- or you did have a walker,  
 14 though? Or not?  
 15 A Yes. Or my cane one or -- I went from one  
 16 back --  
 17 Q Oh, right.  
 18 A -- one or the other. I had a walker and a cane,  
 19 so...  
 20 Q Okay. And neither one impacted your job  
 21 performance or ability to perform your job;  
 22 correct?  
 23 A No.  
 24 Q All right. So when you came back to work, after  
 25 having taken the time off and the FMLA time off,

1 the -- you were -- were there any ramifications  
 2 to that? Were people mad at you? Were there  
 3 any problems that you detected at the time you  
 4 came back to work related to your time off?  
 5 A Not that I was aware of.  
 6 Q Okay. All right. So let's move to the  
 7 elimination of your job.  
 8 A Okay.  
 9 Q I'm going to hand you what will be Exhibit 22.  
 10 (WHEREUPON, Exhibit Number 22, Position  
 11 change notice, was marked for identification.)  
 12 Q You may not have seen this before, but it looks  
 13 like a notice, an internal notice or document  
 14 related to the termination of your position with  
 15 the District. And is that signature -- you may  
 16 have seen it enough to know if that is Bill  
 17 Smith's, the first signature? Or maybe somebody  
 18 signed it for him? I'm not sure.  
 19 A Yeah. I'm not sure either.  
 20 Q Okay.  
 21 A I believe the "MH" is Megan Huff, is her  
 22 initials. I'm not sure, but I --  
 23 Q Right. May have been she signed it for him or  
 24 they both may have signed it?  
 25 A I don't know.

1 Q And then, is that Conrad's signature?  
 2 A I think so. I don't know. I think it is.  
 3 Q I think it is.  
 4 MR. SWIDER: If you can nod your head yes  
 5 or no...  
 6 MR. CONRAD: It is.  
 7 MR. SWIDER: Yeah, it looks like it. All  
 8 right.  
 9 Q And I -- now, I assume this came as a total  
 10 surprise to you, that when, when you were  
 11 notified of the --  
 12 A Yes.  
 13 Q -- elimination?  
 14 A Yes.  
 15 Q And tell me what you recall happening. I know  
 16 you've written it out, both in your charge, and  
 17 probably, you know, and in the Complaint, but  
 18 just, how did that day unfold for you, of the  
 19 termination?  
 20 A I mean, I went to work just like normal, and  
 21 then Bill Smith and someone else came into the  
 22 office.  
 23 Q Did you not -- was that Mark McKinney -- I'm  
 24 sorry. No.  
 25 A Yeah.

1 Q But you didn't know who that was?  
 2 A Exactly.  
 3 Q Okay.  
 4 A I had --  
 5 Q So he comes in with somebody you don't know?  
 6 A Yes. And they want -- Bill wanted to see Rick,  
 7 so I got up and I went into Rick's office and  
 8 told him that Bill was with someone else and  
 9 wanted to see him, and Rick come out and they  
 10 went, you know, they went into Rick's office.  
 11 And then Rick come out and said they wanted to  
 12 see me.  
 13 So I went in and we closed the door and  
 14 then Bill proceeded to say that -- he proceeded  
 15 to tell me that he -- they were doing away with  
 16 the position. And, at one point, I stopped him  
 17 and I asked him who the other gentleman was  
 18 because I didn't know who he, who he was. And  
 19 he said, "Well, that's Mark McKinney."  
 20 And I said, "Okay."  
 21 And so he -- Bill Smith said they were  
 22 doing, they had done some studying and that my  
 23 position wasn't the only one they were going to  
 24 be doing away with, and that they were going to  
 25 do away with my position. And I asked him,

1 "Why?"  
 2 And he said, "For cost effectiveness."  
 3 And I just said, "Okay." I didn't say much  
 4 of anything else because, I mean, that was like  
 5 a gut punch --  
 6 Q Right. Right.  
 7 A -- you know, and so anyway, we, you know, kind  
 8 of -- I don't even remember exactly what was  
 9 said after that, but he did give me an option.  
 10 He told me I could retire or do what Nancy did.  
 11 Q And that was where you thought that meant take a  
 12 laborer's job; right?  
 13 A There was no thinking about it. That's the  
 14 option they gave her, was to terminate her  
 15 employment or take a janitor's position. There  
 16 was nothing -- I mean...  
 17 Q But how did you know that?  
 18 A Because I was in that department when it  
 19 happened.  
 20 Q Okay. So this is Nancy, who? Nancy Williams?  
 21 A Williams.  
 22 Q And what was her job?  
 23 A At the time, she was the assistant  
 24 superintendent of sewer maintenance.  
 25 Q And was this close to the time that your

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1 elimination occurred? Or do you remember?  
 2 A No. It was quite a few years --  
 3 Q Before that?  
 4 A -- before that.  
 5 Q Okay. And you're under- -- were you in the room  
 6 when Nancy Williams was apprised of her job  
 7 elimination?  
 8 A No, I was not.  
 9 Q Okay. And so where did you come away with an  
 10 understanding of her having been offered this  
 11 janitorial position?  
 12 A That's exactly what she told me. And I was also  
 13 informed by another, at the time, supervisor,  
 14 that was in the room at the time.  
 15 Q Who was that?  
 16 A Steve Bowman, who they eliminated totally.  
 17 Because of his position, they, they could do  
 18 away with him. I mean, you know, he wasn't --  
 19 he has a salaried employee and politics changed.  
 20 They wanted to change management, so  
 21 therefore --  
 22 Q Bowman's position was eliminated?  
 23 A Well, no. They just did away with Bowman and  
 24 put their own person in his position.  
 25 Q That's a different issue?

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1 A Bill Smith --  
 2 Q Right.  
 3 A -- gave me three days to contact him. Well, I  
 4 contacted an attorney. Then when I went to talk  
 5 to Bill, or asked to talk to Bill, he wouldn't  
 6 talk to me.  
 7 Q Because he knew --  
 8 A Apparently, he already knew I talked to an  
 9 attorney. But that's, you know, neither here  
 10 nor there. If he would have talked to me, we  
 11 might not be sitting here right now.  
 12 Q Okay.  
 13 A But at 71 years old, no, I was not going to take  
 14 a -- I mean, and with COPD, there's no way I  
 15 could take a janitor's job.  
 16 Q Right. Did you -- so you really didn't have a  
 17 discussion at the time as to what that meant,  
 18 because the comment was, you could do what Nancy  
 19 did; right? Or be -- what was the comment where  
 20 you could take the option and Nancy's job offer  
 21 because she didn't take it?  
 22 A That I could retire or do what Nancy did.  
 23 Q But Nancy did not -- did she take -- she didn't  
 24 take a janitor's job?  
 25 A She did take the janitor's position for a short

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1 A Yes. I mean, but --  
 2 Q Nancy Williams --  
 3 A -- Nancy's position was --  
 4 Q Was eliminated?  
 5 A -- assistant superintendent, and no.  
 6 Q Okay.  
 7 A They replaced her with someone else.  
 8 Q Okay.  
 9 A But they gave her the option to either retire or  
 10 take a janitor's position.  
 11 Q And she told you that?  
 12 A Yes.  
 13 Q Okay. Bowman confirmed that?  
 14 A Yes.  
 15 Q Was Bowman in the room --  
 16 A Yes.  
 17 Q -- during the termination?  
 18 A Yes.  
 19 Q All right. So if that -- if those were the  
 20 choices you had, to retire or take a janitor's  
 21 position, you said, "I'm not going to do either  
 22 one," or how did you respond?  
 23 A No. And, and he gave me three days to contact  
 24 him.  
 25 Q "He" is Bill; right?

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1 period of time before she got her stuff together  
 2 and then did retire, but she was a lot  
 3 younger --  
 4 Q I gotcha.  
 5 A -- when that all happened --  
 6 Q Okay.  
 7 A -- so...  
 8 Q Okay. So the next thing that you do, given that  
 9 you had to -- I mean, you had to believe this  
 10 was unfair --  
 11 A Yes.  
 12 Q -- right? And you wouldn't really know why it  
 13 happened. I mean, you're told that the job was  
 14 no longer necessary, but -- and you're thinking  
 15 there could be more to it than that?  
 16 A I don't know.  
 17 Q Right.  
 18 A I mean...  
 19 Q You wouldn't know?  
 20 A Yeah. I mean, I have no idea.  
 21 Q Okay. So you go to a lawyer --  
 22 A Uh-huh.  
 23 Q -- and, and you can answer that. I'm not going  
 24 to ask you anything that was said, because you  
 25 have privilege with the lawyer, but was the

<p>1    lawyer Aaron?</p> <p>2 A No.</p> <p>3 Q Okay. This was another lawyer. Okay. Who was</p> <p>4    that?</p> <p>5 A That was -- it was the one in Muncie.</p> <p>6 Q Okay.</p> <p>7 A And he advised me to file --</p> <p>8        MR. WILLIAMSON: Stop. Stop.</p> <p>9 Q No. You don't have to say that. Yeah. You</p> <p>10   have lawyer/client privilege --</p> <p>11 A Okay.</p> <p>12 Q -- so what we can't talk about, I don't want you</p> <p>13   to tell me --</p> <p>14 A Okay.</p> <p>15 Q -- is what you talked about with your lawyer.</p> <p>16 A Sure.</p> <p>17 Q But you can give me the name of the lawyer and</p> <p>18   you can give me when it occurred --</p> <p>19 A Okay.</p> <p>20 Q -- but not anything behind it, but anyway --</p> <p>21 A I'm going to have to think because --</p> <p>22 Q That's okay. You went to a lawyer in Muncie?</p> <p>23 A Yes.</p> <p>24 Q And then was that the point at which you filed a</p> <p>25   civil rights charge? Or did you file that after</p>	<p>Page 114</p> <p>1    me. He just told me what I should do, I guess.</p> <p>2 Q Okay. So, okay. Let me ask this: Did you go,</p> <p>3   then, to the Indiana -- to the -- did you call</p> <p>4   the EEOC? How did you, how did you get this --</p> <p>5   did you fill this out yourself, or did the EEOC</p> <p>6   help you?</p> <p>7 A I called EEOC and they told me to do it online.</p> <p>8 Q Okay. And then you filled it out yourself?</p> <p>9 A (Nods.)</p> <p>10 Q So this would be your language in the charge?</p> <p>11 A Yes.</p> <p>12 Q Okay. And you see that this charge is filed</p> <p>13   against the City of Muncie? Do you see that?</p> <p>14 A (Nods.)</p> <p>15 Q You're shaking your head "yes"; right?</p> <p>16 A Yes.</p> <p>17 Q All right.</p> <p>18 A I'm sorry.</p> <p>19 Q And, and as you know, you worked for the Muncie</p> <p>20   Sanitary District; correct?</p> <p>21 A Yes.</p> <p>22 Q All right. Then let's look at the allegations,</p> <p>23   and let's make sure we've covered today, you</p> <p>24   know, anything that gave you reason to believe</p> <p>25   that you were discriminated against or</p>
<p>1    you saw Aaron? Do you remember?</p> <p>2 A No. I filed after I talked to the attorney in</p> <p>3   Muncie.</p> <p>4 Q Muncie, okay. So, so this is the civil rights</p> <p>5   charge. Let's take a look at that. And that is</p> <p>6   what will be marked as Exhibit 23.</p> <p>7        (WHEREUPON, Exhibit Number 23, Charge of</p> <p>8   Discrimination, was marked for identification.)</p> <p>9 Q All right. It looks like this got filed, or at</p> <p>10   least signed by you on December the 12th. Do</p> <p>11   you see that at the bottom?</p> <p>12 A Yes.</p> <p>13 Q And it looks like you digitally signed it, which</p> <p>14   is certainly the way things are happening these</p> <p>15   days of COVID. And did you have an opportunity</p> <p>16   to review this charge before you filed it? Or</p> <p>17   before -- yeah, before you signed and filed it?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 A I believe I was -- I did.</p> <p>21 Q Okay. And at this point, again, you were</p> <p>22   represented by a lawyer, another lawyer in</p> <p>23   Muncie; right? Other than -- this was not</p> <p>24   Aaron?</p> <p>25 A I mean, right. I mean, he wasn't representing</p>	<p>Page 115</p> <p>1    terminated based on, in this case, your</p> <p>2   disability and your age. And I don't know what</p> <p>3   "other" is. It might have been a reference to</p> <p>4   FMLA.</p> <p>5        Do you see the boxes? You've got the age</p> <p>6   box checked and the disability box checked and</p> <p>7   then you see where you have the "X" under</p> <p>8   "other"? Do you know what that related to?</p> <p>9 A No.</p> <p>10 Q Maybe FMLA, I don't know.</p> <p>11 A I don't know.</p> <p>12 Q Okay. "My most recent position was office</p> <p>13   manager" -- "manager for the Muncie Sanitary</p> <p>14   District and my direct supervisor was Rick</p> <p>15   Conrad. On November 5th, 2019, District board</p> <p>16   president, Bill Smith, and Sanitary District</p> <p>17   Attorney Mark McKinney came to my office and</p> <p>18   said they wanted to speak with Rick. I showed</p> <p>19   them to Rick's office and shortly afterwards,</p> <p>20   Rick came out and said they wanted to speak with</p> <p>21   me. Bill then advised me that the City was</p> <p>22   eliminating my job and gave me the option to</p> <p>23   retire or do what Nancy did. I understood this</p> <p>24   to retire or become a laborer, as that is what</p> <p>25   was offered to former coworker, Nancy Williams."</p>

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1        So you've already testified to that;		1 A I know they moved him to another department.	
2        correct?		2 Q So they didn't let him go?	
3 A Yes.		3 A No.	
4 Q "Rick and Bill knew that working as a laborer		4 Q Okay. And do you have any idea how old Hilbert	
5 was out of the question in my case, and they are		5 was?	
6 aware I am 71 years old and have disabilities		6 A I'd say he's in his 50s, 60s, 50s, I'd say.	
7 and therefore knew I would have no option but to		7 Q Does he have -- well, yeah. When you're	
8 resign."		8 referring to someone over the age of 50, you're	
9        And you already said they knew you were 71		9 referring to Hilbert?	
10 years old, which would have made it hard to be a		10 A Yeah.	
11 laborer.		11 Q Okay. And did he have any disabilities of which	
12        "And have disabilities," and when you say		12 you're aware of?	
13 "have disabilities," you're relating to COPD?		13 A Not that I'm aware of, no.	
14 A Yes.		14 Q Did he file FMLA --	
15 Q Are you relating any other disability?		15 A I have --	
16 A No.		16 Q -- leave?	
17 Q Okay. "And therefore, I had no option but to		17 A I do not know.	
18 resign." Okay. "During the meeting, I was		18 Q Okay. Now, after you filed the charge, which is	
19 informed that the City is also eliminating the		19 Exhibit 23, did you have further contact or any	
20 position of billing department. This position		20 contact with anybody from the EEOC?	
21 is also held by an employee over the age of 50."		21 A Yeah, but I don't recall the name.	
22        Who was that referencing?		22 Q Okay. Let's see here.	
23 A They didn't -- as far as I know, they didn't		23        (WHEREUPON, Exhibit Number 24, Response to	
24 eliminate anybody.		24 Position Statement, was marked for	
25 Q Okay. But they told you they were?		25 identification.)	
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1 A Yes.		1 Q Have you seen, or can you tell us what Exhibit	
2 Q Okay. Were you aware of an individual by the		2 24 is?	
3 name of Dan Hilbert?		3 A Yes. I've seen this.	
4 A Yes.		4 Q Okay. Is this -- did you submit this to the	
5 Q Do you know whether his job was eliminated or		5 EEOC?	
6 not?		6 A Yes, I did.	
7 A Yes.		7 Q Okay. All right. "So Mr. Smith is, in fact,	
8 Q Was it eliminated?		8 the president of the board of Sanitary	
9 A Yes.		9 Commissioners and I do believe that he's 79	
10 Q And do you know anybody in the position of the		10 years of age."	
11 assistant superintendent of sewer maintenance?		11        So Bill is older than you; right?	
12 A Yes.		12 A Yes.	
13 Q Who was that?		13 Q "His position is a part-time position and his	
14 A Doug Marshall.		14 position is appointed by the mayor."	
15 Q And do you know whether his position was		15        Did you know that -- and I think you	
16 eliminated? And you may not. I mean -- you		16 probably did. You may have said it here -- he	
17 know something?		17 assumed Nikki's duties for some period of time	
18 A You're right. I do know something.		18 as an acting administrator; correct?	
19 Q What is that? I get to ask you. And this was		19 A Yes.	
20 the Doug Marshall we talked about before?		20 Q All right. And so, in that capacity, was he	
21 A Yes. Yes.		21 working full-time? Or do you even know?	
22 Q Tell me what you think or know happened.		22 A I do not know.	
23 A I don't know that -- I don't know if they did		23 Q Okay. In their response, it says -- but, but	
24 away with the position or not.		24 you do know that Bill was -- is older than you	
25 Q Okay.		25 are?	

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1 A Yes.  
 2 Q Okay. In their response, it says "I was to  
 3 contact Nikki Grigsby of any wrongdoing or  
 4 discrimination. I'm sorry. But she's been on  
 5 administrative leave since her arrest by the FBI  
 6 and Bill Smith has assumed her duties as  
 7 District administrator."  
 8 So what you're saying there is what we said  
 9 at the beginning. You've said -- beginning of  
 10 your testimony, "so my complaint mechanism would  
 11 have been the very person who fired me"?  
 12 A Yes.  
 13 Q Okay. Because Nikki wasn't available at that  
 14 point?  
 15 A Yes.  
 16 Q All right. "Our handbook is also a little  
 17 one-sided. I have copies of prior handbooks  
 18 that were fair and equitable to the employer and  
 19 employees as well. I can supply that, if  
 20 needed."  
 21 Have you fully testified to your  
 22 understanding of what this means today?  
 23 A Yes.  
 24 Q Okay. Is there anything else you would add to  
 25 that?

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1 A No.  
 2 Q Okay. "There were other positions within the  
 3 District that could have been combined or I  
 4 could have been moved into and a younger person  
 5 would have been displaced."  
 6 What were you thinking of in terms of other  
 7 positions that you could have assumed?  
 8 A Well, the job that --  
 9 Q Sorry?  
 10 A -- the job at the water, wastewater plant.  
 11 Q What was that job?  
 12 A Jill's job.  
 13 Q Okay.  
 14 A She's younger than I am, same job, or the job at  
 15 sewer maintenance.  
 16 Q I'm sorry. And her name is -- that's Jill  
 17 Harris; right?  
 18 A Harris.  
 19 Q Okay.  
 20 A There's also a job at sewer maintenance that I  
 21 could have went into.  
 22 Q And who had that job?  
 23 A Well, at that time, it would have been either --  
 24 well, Haley was the younger employee.  
 25 Q Kaley?

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1 A Haley, uh-huh, Millspaugh.  
 2 Q These are both secretary, office manager  
 3 positions?  
 4 A Yes.  
 5 Q Okay. Any, any others that you're referring to  
 6 here or would otherwise mention at this time?  
 7 A Tammy Branson, sanitation.  
 8 Q Who is this?  
 9 A Tammy Branson at sanitation. They were all  
 10 younger than I am, and they were all doing the  
 11 same things.  
 12 Q Anyone else?  
 13 A Can't think of what her first name is. Shoot.  
 14 Q That's all right. If you come up with it, just  
 15 tell Aaron and he can pass it on to us.  
 16 A Okay.  
 17 Q Okay? I mean, the bottom line is what you're  
 18 saying is, there were younger people who hadn't  
 19 been there as long as you, in comparable  
 20 positions elsewhere and they could have been --  
 21 as your job was eliminated, they could have been  
 22 bumped or taken out of their role?  
 23 A Yes.  
 24 Q Now, having a union would have guaranteed you  
 25 probably that kind of right --

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1 A Probably.  
 2 Q -- right? Because you're familiar with bumping  
 3 procedures --  
 4 A Yes.  
 5 Q -- based on seniority in a union environment --  
 6 A Yes.  
 7 Q -- right? Is there any policy you're aware of  
 8 in the handbook that would have had a similar  
 9 impact? In other words, a bumping-type  
 10 procedure in the handbook?  
 11 A Not anymore.  
 12 Q Okay. There might have been at some point?  
 13 A Yes.  
 14 Q Okay. Since the time that it's been taken out  
 15 of the handbook, are you aware of any bumping  
 16 situations that occur at the District?  
 17 A No. I'm not aware of anybody's job being done  
 18 away with either.  
 19 Q Okay. That doesn't mean it didn't happen.  
 20 You're just not aware of it, or you're sure it  
 21 never happened before?  
 22 A Pretty sure it never happened.  
 23 Q All right. So in, in the context of your age  
 24 discrimination claim, what gives you reason to  
 25 believe that you were discriminated based on

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1 your age, is that younger people in other  
 2 comparable positions were retained while you  
 3 were let go?  
 4 A Yes.  
 5 Q Is there anything else that gives you reason to  
 6 believe that you -- you were terminated based  
 7 on your age?  
 8 A No. That would -- that's pretty much it. I  
 9 mean...  
 10 Q Okay. And did it make any sense to you that --  
 11 companies and cities can only act through their  
 12 employees. So when we say that in the charge,  
 13 the City of Muncie discriminated against you  
 14 based on your age, that means people had to have  
 15 done that.  
 16 So in this instance, would you be saying  
 17 that Bill Smith discriminated against you based  
 18 on your age? Or do you not know?  
 19 A My employer.  
 20 Q Your employer?  
 21 A And with him being the board president, and  
 22 District administrator at the time, puts him in  
 23 the position -- I mean, he, you know, he's in  
 24 the position of hire and fire or whatever.  
 25 Q Okay. So we talked about this earlier. There's

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1 you were discriminated against based on your  
 2 age. What would be the basis for your  
 3 conclusion that you were discriminated against  
 4 based on your disability? Anything different  
 5 or...  
 6 A Just other than what I had to go through when I  
 7 was in the other department with my  
 8 concentrator. I don't know if anybody else had  
 9 to go through that or not.  
 10 Q All right. But who would have been involved in  
 11 that decision? Would that have been --  
 12 A That would have been --  
 13 Q Terry?  
 14 A -- Tracy or Doug or the board or I don't know.  
 15 Q But you don't know --  
 16 A For sure, no, I don't.  
 17 Q -- about that?  
 18 Now, the three people that you mentioned,  
 19 and there may be a fourth, who had jobs like  
 20 yours, did any of them have disabilities that  
 21 you're aware of?  
 22 A The comparable positions, no, not, not that I'm  
 23 aware of. I'll put it --  
 24 Q Right. They --  
 25 A -- that way.

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1 nothing that you have in the way of information  
 2 that would suggest to you that Rick Conrad  
 3 discriminated against you based on your age?  
 4 A No.  
 5 Q Okay. So if -- and again, there may be more  
 6 people involved than you know and the discovery  
 7 process is ongoing, but at this point, the  
 8 person you would say who discriminated against  
 9 you based on your age would be at least Bill  
 10 Smith?  
 11 A Yes.  
 12 Q Okay. And from your standpoint, you don't know  
 13 what role Mark McKinney had in this at all,  
 14 other than he was in the meeting with you when  
 15 you were terminated?  
 16 A He was their attorney. That's all I know.  
 17 Q Right. Who -- I can tell you, we generally  
 18 don't have a decision-making role for our  
 19 clients, but you don't know whether he was part  
 20 of the decision or not?  
 21 A Exactly.  
 22 Q All right. And you don't know to what extent  
 23 Rick was a part of the decision, if any?  
 24 A Exactly.  
 25 Q So that would be the basis for your claim that

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1 Q -- could have had disabilities?  
 2 A I know that Jill had knee replacement --  
 3 Q Okay.  
 4 A -- but I don't know how much of a disability or  
 5 if -- you know, I don't dig into their medical  
 6 histories.  
 7 Q Right. Right. So from your perspective, at  
 8 least, again, it might come out through  
 9 discovery, you're not aware of whether they had  
 10 disabilities or not?  
 11 A Right.  
 12 Q Okay. Or whether they were regarded as having  
 13 disabilities or not, even if they didn't have  
 14 disabilities?  
 15 A Right.  
 16 Q And then with respect to FMLA, being retaliated  
 17 against for that, we talked about, at least  
 18 during the course of your deposition, you didn't  
 19 think any of that occurred. Is there anything  
 20 else that -- is there anything that suggests to  
 21 you that you were being retaliated against based  
 22 on your FMLA leaves?  
 23 A Not that I'm aware of.  
 24 Q Okay. And again, that might come out through  
 25 discovery, and sometimes it can even relate to

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1 timing. But there's nothing that you're aware  
 2 of that would suggest to you, at this point,  
 3 that you were discriminated against or  
 4 retaliated against based on your using FMLA  
 5 time; is that correct?  
 6 A Right. Yes.  
 7 Q Okay. Do you recall receiving a decision from  
 8 the Equal Employment Opportunity Commission in  
 9 response to your charge? In other words, did  
 10 the EEOC -- do you know whether they made any  
 11 finding?  
 12 A I don't remember. I just know that they sent me  
 13 a letter giving me -- telling me I had a right  
 14 to sue.  
 15 Q Got it.  
 16 A So I don't know.  
 17 Q All right. Let me hand you what is marked as  
 18 Exhibit 30.  
 19 COURT REPORTER: That would be Exhibit 25.  
 20 MR. SWIDER: That's because my 24 looks  
 21 like a 29.  
 22 (WHEREUPON, Exhibit Number 25, Dismissal  
 23 and Notice of Rights, was marked for  
 24 identification.)  
 25 Q All right. Exhibit 25. Do you remember seeing

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1 charge against the City, that came from advice  
 2 through the EEOC?  
 3 A Yes.  
 4 Q Okay. And do you remember who gave you that  
 5 advice?  
 6 A No, I do not.  
 7 Q Okay. All right. Let me hand you what will be  
 8 marked as Exhibit --  
 9 A As I tried to explain to them they were two  
 10 different entities.  
 11 Q Went in one ear and out the other?  
 12 A Apparently.  
 13 Q Okay. All right. Let me give you what's marked  
 14 as Exhibit 26.  
 15 (WHEREUPON, Exhibit Number 26, Indiana  
 16 Department of Workforce Development  
 17 Determination, was marked for identification.)  
 18 Q Did you file for Unemployment Compensation  
 19 Benefits after your termination?  
 20 A Yes, but not right away.  
 21 Q Okay. What happened -- why, why did you wait on  
 22 that?  
 23 A Because I was told that I needed to wait, so I  
 24 did.  
 25 Q Okay. And were you told by a lawyer or...

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1 this?  
 2 A Yes, I do.  
 3 Q Okay. And so, "The EEOC issues the following  
 4 determination based upon its investigation: The  
 5 EEOC is unable to conclude that the information  
 6 obtained established violations of the statute.  
 7 This does not certify that the Respondent is in  
 8 compliance with the statutes. No finding is  
 9 made as to any other issues that might be  
 10 construed as having been raised by this charge."  
 11 So at least, what you understood is that  
 12 they dismissed your charge, which then gave you  
 13 the right to bring a lawsuit?  
 14 A Right.  
 15 Q Okay. And when it says, "No finding is made as  
 16 to any other issues," they wouldn't have  
 17 authority to decide the FMLA issue, if that had  
 18 been raised, but you don't recall whether you  
 19 raised that at the EEOC or not?  
 20 A No, I do not.  
 21 Q Okay. And you can see at the bottom, this was  
 22 sent to the City of Muncie; do you see that?  
 23 A That was because that's what I was told to do by  
 24 the EEOC.  
 25 Q Okay. So in other words, when you filed your

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1 A No.  
 2 Q Okay. Who -- where did you get that advice?  
 3 A From someone -- and there, again, I didn't take  
 4 names, which I know better --  
 5 Q Right.  
 6 A -- but --  
 7 Q Was this at Workforce Development, then?  
 8 A Yes.  
 9 Q Okay. So --  
 10 A And it was somebody on the phone.  
 11 Q Well, let me ask you this: There was a point at  
 12 which you did file for benefits?  
 13 A Yes.  
 14 Q Do you recall when that was?  
 15 A I want to say that it was like in January,  
 16 January, February, maybe, but then I didn't get  
 17 anything until -- I didn't start receiving any  
 18 benefits until late in 2020.  
 19 Q Did they make up the --  
 20 A Yes.  
 21 Q Okay.  
 22 A They did.  
 23 Q And at that time -- and let me just cut to the  
 24 chase on this, because I'm going to ask you more  
 25 questions about it, but it seemed to me that

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1 A -- and I was hired as an administrative  
2 assistant.  
3 Q Okay. Let me hand you, I think the  
4 documentation, communications relative to that,  
5 as Exhibit 27.  
6 (WHEREUPON, Exhibit Number 27, Ames  
7 Construction letter - November 23, 2020, was  
8 marked for identification.)  
9 Q Is this the job you're talking about --  
10 A Yes.  
11 Q -- that you were offered?  
12 A Yes.  
13 Q Did you accept -- it looks like you accepted the  
14 job?  
15 A Yes.  
16 Q And you would be making more there than you were  
17 making for the District, if I read that right?  
18 A Yes.  
19 Q Okay. And the benefits were comparable?  
20 A Yes.  
21 Q Did you -- how long -- are you still working  
22 there?  
23 A No.  
24 Q What happened?  
25 A I got laid off because there wasn't enough work

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1 marked as Exhibit 28, which would be your  
2 responses to our interrogatories.  
3 (WHEREUPON, Exhibit Number 28, Plaintiff's  
4 Answers to Defendant's First Set of  
5 Interrogatories, was marked for identification.)  
6 Q Go over a few things there. I think you've  
7 pretty much testified to anything and everything  
8 in this, but we'll take a look. Do you  
9 recognize this document?  
10 A Yes.  
11 Q And is this your writing on the top  
12 right-hand --  
13 A Yes.  
14 Q -- corner? And you've looked at it and made  
15 some changes; is that correct?  
16 A Yes. Just in the spelling of --  
17 Q Jill Harris's name?  
18 A Yes.  
19 Q It was Jill Paris. So on the second page,  
20 you're asked to identify potential witnesses in  
21 this, and I just want to go through and make  
22 sure of any information you haven't already  
23 passed on to me. "Dan Hilbert has information  
24 regarding plaintiff's employment and  
25 performance, as well as defendant, Muncie

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1 for two administrative assistants --  
2 Q Oh.  
3 A -- so...  
4 Q When did you get laid off?  
5 A February the -- February 18th, I think. I'm not  
6 sure.  
7 Q Okay.  
8 A But it was in February.  
9 Q Have you been looking for work since then?  
10 A Yes.  
11 Q Okay. What kinds of efforts have you made?  
12 A Same thing, online, through Workforce  
13 Development in Muncie, with the COVID, not --  
14 well, I can't say it's going down, because it's  
15 coming back up now, but before, as it was going  
16 down, but yes, I've looked and I have the  
17 documents.  
18 Q All right. If you would just give all that  
19 to -- or make sure he has it all --  
20 A Okay.  
21 Q -- because part of your responsibility, and you  
22 recognize it, is to mitigate your damages. That  
23 means you have to be out there trying to find  
24 employment. And let's see what this is. Okay.  
25 I'm going to hand you now what will be

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1 Sanitary District's policies and procedures."  
2 What do you think Hilbert has that would be  
3 relevant to your situation, specifically?  
4 Because he was let go; right?  
5 A Yes.  
6 Q Okay.  
7 A And then -- yes, that's all I can say.  
8 Q Any information that he would add to your claims  
9 that you're aware of now?  
10 A No, not that I'm aware of. I don't know if he  
11 would add anything to it or not.  
12 Q How about Jill Harris?  
13 A I don't know about Jill, I don't know if she  
14 would add to it or not.  
15 Q Grigsby?  
16 A I have no idea.  
17 Q Rick is here?  
18 A Uh-huh.  
19 Q And anything else that Rick might add, other  
20 than the obvious, which is he was your  
21 supervisor. He was there when you were  
22 terminated. He gave you his reviews, you know,  
23 we've gone through most of that. Is there  
24 anything else that Rick would be able to add?  
25 A I don't know. I don't --

1 Q You're right. And -- but you listed him and  
 2 these others as witnesses, you know. It says,  
 3 "Identify all persons with knowledge or  
 4 information regarding any facts or allegations  
 5 in your Complaint. Please identify the facts,"  
 6 and you've got a broad reference to it. I just  
 7 want to be sure I understand that I'm not  
 8 missing anything.

9 In other words, from your standpoint, there  
 10 may be things that are -- develop in discovery,  
 11 but at this point, is there anything else that  
 12 any of these people would add to your claim?

13 In other words, confirm or give evidence  
 14 that you were discriminated against based on,  
 15 you know, your age, your disabilities, or your  
 16 FMLA filing?

17 A I don't think so.

18 Q Okay. And that would be the same for Will-,  
 19 Bill Smith and John Barlow?

20 A Yeah.

21 Q So then you're asked specifically in  
 22 Interrogatory Number 7, which is on Page 4,  
 23 "Identify the facts and documents supporting the  
 24 allegation in your Complaint that defendant  
 25 retaliated against you for asserting your rights

1 A Jill.  
 2 Q Okay. Anybody else that this references?  
 3 A Kaley.  
 4 Q Anybody else?  
 5 A (Shakes head.)  
 6 Q Okay.  
 7 A No.  
 8 Q Okay.  
 9 A Sorry.  
 10 Q No. You're fine. That's what I'm trying to get  
 11 at here.

12 Looking at Interrogatory Number 9, this  
 13 asks about people who were treated more  
 14 favorably than you, under similar circumstances,  
 15 and you said, "Based on information and belief,  
 16 Jill Harris is a non-disabled employee who is  
 17 much younger than I whose job was not  
 18 eliminated."

19 Any-, anything else that you would point to  
 20 here? "Identify all other similarly situated  
 21 employees that you allege were treated more  
 22 favorably," anybody else that you would point  
 23 to, other than Jill?

24 A Just the ones that I named earlier.

25 Q Which would be Kaley and who was the -- there

1 under the FMLA."

2 And I think -- oh, it looks like we have,  
 3 "Plaintiff worked for defendant for several  
 4 years. During her tenure with defendant,  
 5 plaintiff submitted several FMLA leave requests.  
 6 Plaintiff's leave request documents are in the  
 7 possession, custody, and control of defendant.  
 8 These leave requests includes requests submitted  
 9 in March and September of 2019. Defendant  
 10 terminated plaintiff's employment and had her  
 11 duties absorbed by employees she trained, and  
 12 who had not used FMLA leave as opposed to  
 13 terminating them and having their" -- "having  
 14 her absorb their duties."

15 Now, I understand that much of this is  
 16 often completed by the lawyer, because we do  
 17 that, and then you look at or read it before  
 18 it's submitted.

19 Is there any evidence, other than what  
 20 you've testified to today, that would suggest  
 21 that your FMLA exercise had anything to do with  
 22 your termination?

23 A I don't know.

24 Q Okay. Okay. And who are the employees that you  
 25 trained?

1 was a third person?

2 A Tammy and --

3 Q You didn't remember the fourth, but let me see  
 4 if that Tammy is what we have.

5 A Her last name is Quackenbush.

6 (Court reporter clarification.)

7 Q So those four, who were similarly situated, in  
 8 that they had the secretarial/office manager  
 9 functions, younger than you, less tenure than  
 10 you, don't know about their FMLA activity or  
 11 their disabilities, but their jobs remained,  
 12 while yours was terminated?

13 A Yes.

14 Q Okay. Okay. Now, Interrogatory Number 10, your  
 15 answer, "Plaintiff's employment was terminated  
 16 on or about November 10th, 2019. Based on  
 17 information and belief, plaintiff's employment  
 18 was terminated based on her age, disability, and  
 19 her use of FMLA leave."

20 That's the heart of the case. Have we  
 21 fully discussed in this deposition today all  
 22 facts that led you to this conclusion?

23 A Yeah, I believe we have.

24 Q Okay. Then, let's see here, looks like in terms  
 25 of other income, you sold some Avon and shirts?

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1 A 31.  
 2 Q Okay. Is that a -- like, what is 31?  
 3 A Tote bags and purses and...  
 4 Q Okay. All right. I just want to go over with  
   5 you a few questions about the income again, so I  
   6 understand the nature of any claims for back  
   7 pay. And I'm going to give you now, which I  
   8 think is consistent with what we discussed about  
   9 how much you were earning with the District,  
 10 Exhibit 29.  
 11       (WHEREUPON, Exhibit Number 29, Earnings  
 12 History Report, was marked for identification.)  
 13 Q And what this purports to be -- and I'm pretty  
   14 sure you haven't seen it before -- is your  
   15 earnings for 2018 and 2019 with the District.  
   16 And if you look at the second page, the gross  
   17 wage for 2018 looks to be \$39,722.40; do you see  
   18 that?  
 19 A Yes.  
 20 Q Is that, is that about right from your  
   21 understanding?  
 22 A Yes.  
 23 Q And then if you look at the last page, which  
   24 relates to the earning for 2019, which would  
   25 have been a month short or so, or almost two

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1 months, you got your last paycheck in December,  
 2 so less than that, again, about the same amount  
 3 \$39,106. You might have gone over \$40,000 --  
 4 A Yes.  
 5 Q -- if you had worked out the year. Does that  
   6 make sense to you?  
 7 A Yes.  
 8 Q Okay. Now I'm going to hand you tax returns,  
   9 and we'll start with 2020. And that's going to  
 10 be Exhibit 30.  
 11       (WHEREUPON, Exhibit Number 30, 2020 1040  
 12 U.S. Individual Income Tax Return, was marked  
 13 for identification.)  
 14 Q Now, looking at this tax return, when you look  
   15 at the first page --  
 16 A Third page?  
 17 Q First page.  
 18 A Oh, okay.  
 19 Q Number 1, do you see halfway down, "Wages,  
   20 salaries, tips, attach W-2s," and this would  
   21 suggest that in terms of income from other  
   22 employment, you made only \$2,829 in 2020. Is  
   23 that accurate?  
 24 A Yeah.  
 25 Q As far as you're aware?

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1 A I think so. I'm...  
 2 Q Okay. And then it looks like you've got  
 3 pensions and annuities of \$36,656. Is that the  
 4 lump sum PERP monies that they gave you? Do you  
 5 know what that is?  
 6 A That would, that would have been a part of it,  
   7 yeah. Yes.  
 8 Q And then --  
 9 A Because this is for 2019.  
 10 Q It should --  
 11 A 2019, filed in 2020?  
 12 Q No. I think it's for 2020, so you're a little  
   13 bit ahead --  
 14 A Okay.  
 15 Q -- of the curve here if you've already got it  
   16 produced for last year, because it's not due  
   17 until May.  
 18 A All right. Well, then apparently it is just  
   19 my -- because I had to withdraw money out of my  
   20 pension to pay my bills, to help pay my bills.  
 21 Q But that's -- if you add these two together, do  
   22 you see the social security benefits?  
 23 A Yes.  
 24 Q Which, when did you start drawings social  
 25 security? Because you were eligible even while